

REAUTHORIZATION OF THE SBA'S CONTRACTING PROGRAMS

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

JUNE 12, 2019

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ONE HUNDRED SIXTEENTH CONGRESS

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REAUTHORIZATION OF THE SBA'S CONTRACTING PROGRAMS

WEDNESDAY, JUNE 12, 2019

UNITED STATES SENATE,
COMMITTEE ON SMALL BUSINESS
AND ENTREPRENEURSHIP,
Washington, DC.

The Committee met, pursuant to notice, at 3:15 p.m., in Room 428A, Russell Senate Office Building, Hon. Marco Rubio, Chairman of the Committee, presiding.

Present: Senators Rubio, Risch, Scott, Ernst, Young, Romney, Hawley, Cardin, Cantwell, and Hirono.

OPENING STATEMENT OF HON. MARCO RUBIO, CHAIRMAN, A U.S. SENATOR FROM FLORIDA

Chairman RUBIO. Today's hearing on the Senate Committee on Small Business and Entrepreneurship will come to order. Thank you for your patience. We have six votes and we made a wise decision, I believe, the Ranking Member and I, that it would be better to just ride through the six than to try to do the back-and-forth, and I think we probably saved time in the long run. So I want to thank you for being here and for your patience.

For small businesses and entrepreneurs around the country, securing a contract with the Federal Government can mean instant growth in the marketplace. In 2018, the Federal Government obligated \$560 billion in contracts for goods, services, research, and development. More than \$100 billion of that total went to small business contractors.

The Contracting Office at the SBA administers several targeted programs, authorized by Congress, that seeks to help entrepreneurs access these procurement opportunities with the Federal Government, a Federal Government, by the way, which is required to spend 23 percent of all Federal contracting dollars with small businesses.

The four primary programs which are the focus of today's hearing provide participants with access to compete within a smaller pool of contracts that are set aside for small businesses. The first, the Small Business and Capital Ownership Development Program, which is commonly referred to as 8(a) because of its location within the Small Business Act, also provides small businesses with procurement training, technical assistance, and the ability to be paired with a mentor business.

In addition to the classic small businesses that participate in this program, for up to nine years before they graduate out, 8(a) also

gives businesses that are communally owned, by Alaska Native corporations, Native Hawaiian organizations, Indian tribes, or community development corporations the ability to participate in the program indefinitely.

The Historically Underutilized Business Zone program, or HUBZone, which works to stimulate economic development and create jobs in the areas of the country that need it the most, was created in 1997. The program uses set-aside contracts and a price preference to bring opportunity to distressed inner cities and rural communities where joblessness is often rampant.

The Women-Owned Small Business Program and Service-Disabled Veteran-Owned Small Business Program give two very important small business groups the chance to compete for set-aside contracts.

In addition to the government-wide goal of awarding 23 percent of contracts to small businesses, Congress has set goals of 5 percent each for 8(a) and women-owned businesses, and 3 percent for service-disabled veteran-owned small businesses and HUBZone-certified businesses.

The Federal Government, by the way, could easily exceed these goals if small businesses were given more guidance on the difficult and complex world of Federal procurement, and if agency contracting specialists were better informed on how to make compliant set-aside and sole-source awards to small businesses.

Unfortunately, as a result of fraud across the board in the SBA programs, as reported from multiple government accountability office investigations, businesses that do not qualify, or should not be qualifying for these specific category programs are often taking the contracts that are intended for these groups.

For example, a 2018 audit by the Office of Inspector General looked at 56 sole-source awards made to firms in the Women-Owned Small Business Program and it found that 18 contracts, valued at \$11.7 million, were awarded to firms that had no documentation; 32 contracts, valued at \$40.5 million, were awarded to firms with incomplete documentation; and 50 contracts, valued at \$52.2 million, were not awarded in compliance with Federal regulations. The 2019 GAO study of this program showed that the SBA still had not developed a process to identify when ineligible awards were made under this program.

Too many agency contracting officers also do not know how to work with the contracting programs. A 2018 GAO study found the SBA's procurement scorecard to assess agency compliance with small business contracting was not effectively measuring agency performance or promoting opportunities for small businesses.

The facts are simple. The small businesses' contracting goals are aspirational and unenforceable, so if we do not make contracting with small businesses easy for Federal agencies it is not going to happen. The SBA should be an ally for small business contractors, not an additional and frustrating hurdle to overcome. The disparities amongst the prime contracting programs have made it difficult for small businesses to even know where to start. Each program is an entirely different system, even for the initial certification process, not to mention the different forms of training, types of awards,

award amounts, price preferences that are made available to each group.

In 2015, Congress passed a law requiring that the SBA set up a certification process for the then self-certified Women-Owned Small Business Program. Unfortunately, four years later, the SBA has yet to comply with that law. In 2018, Congress passed a law to measure a business revenue for five years, instead of three, when determining if that business is small and if they can compete for set-aside contracts. But the SBA has frankly refused to comply with that law.

While the prime contracting programs are the most well-known parts of the SBA Contracting Office, the subcontracting program is increasingly important, as the government moves towards consolidated purchasing and larger, multi-award contracts.

It is important that we find ways for small businesses to continue to work with the government, even as the government is changing its purchasing habits to rightfully use taxpayer money more efficiently. Innovations and unique solutions from small businesses in the private sector help to support our soldiers, protect our national security, enhance government operations, and make the Federal bureaucracy more efficient.

To keep this contracting cycle going we must reduce fraud, streamlining the Contracting Office at the SBA, and provide more opportunities for small businesses to grow and prosper, and I look forward to discussing ways to accomplish these goals today.

With that I turn it over to you, the Ranking Member.

**OPENING STATEMENT OF HON. BENJAMIN L. CARDIN,
RANKING MEMBER, A U.S. SENATOR FROM MARYLAND**

Senator CARDIN. Well, thank you very much, Mr. Chairman, and I thank you for convening this hearing. This is our sixth hearing on the reauthorization of the Small Business Act, and today we will focus on the contracting programs with SBA that help level the playing field for starkly disadvantaged business owners. These programs include the 8(a) Business Development Program, the Women-Owned Small Business Program, Service-Disabled Veteran-Owned Small Business Program, and the Historically Underutilized Business Zones, HUBZones, program.

The motivation behind my commitment to ensuring a fair Federal contracting process is twofold. First, the Federal Government is the largest consumer of goods and services on the planet, and Federal contracting is a vital part of the economy in my home State of Maryland. In fact, Federal Government contracting spending accounts for about 8 percent of Maryland's annual GDP, and supports thousands of jobs that help the families and bolster the middle class.

Second, Congress passed the Small Business Act to ensure the preservation and expansion of opportunities for small businesses because doing so is basic not only to the economic well-being but the security of our country. Those words were true 65 years ago when the law was passed and it is even more true today.

The Small Business Act sets a goal for Federal Government to spend 23 percent of all contracting dollars with small businesses. While I am pleased that we are meeting this goal, I am troubled

that the data shows that we have a shrinking base of contractors rather than an expanding base of contractors. A recent report by Bloomberg Government found that the number of Federal contractors working on unclassified, prime contracts is at a 10-year low, despite a steady rise in government contract spending over the same period.

This means that while contracts are getting bigger and bigger, we are creating an insular club with fewer and fewer businesses successfully competing for government contracts, creating a less-competitive marketplace and reducing opportunities in the process, and that is contrary to what these set-asides and programs are all about, and that is encouraging new small businesses that can bring innovation and job growth to our economy and help our Nation.

This trend is being driven by the largest agency. Since fiscal year 2009, the number of companies working on contracts with the Department of Defense has declined by 24,000. Similarly, the General Services Administration has seen an 8,000-company decline. The Department of Veterans Affairs and Interior are both contracted with 13,600 fewer companies. These are very troubling figures. Predictably, our Nation's small businesses are bearing the brunt of this decline. According to the same Bloomberg report, the Federal Government did business with 32 percent fewer small vendors in fiscal year 2018 than it did in fiscal year 2009. For comparison, the number of large vendors fell by only 4 percent.

This trend is a cause of great concern in my home State of Maryland, where the Federal Government spent \$33 billion in Federal contract dollars in fiscal year 2018, including \$11 billion to small businesses. We want to create contracting where small, innovative businesses are encouraged, not shut out.

So today I am looking forward to speaking with our witnesses from SBA and GAO about how we can improve opportunities for our Nation's small businesses to contract with the Federal Government. I am also looking forward to hearing from small business owners here today about the support they need from the Federal Government to remain competitive and compete in the marketplace.

I want to thank all of our witnesses for joining us and I look forward to hearing your testimony and innovative ideas for improving the SBA contracting programs and the Federal Government small business contracting procedures.

Chairman RUBIO. All right. We will move to our first panel. Robb Wong is the Associate Administrator of the Office of Government Contracting and Business Development at the SBA, and Mr. William Shear is the Director of Financial Markets and Community Investment at the U.S. Government Accountability Office.

Mr. Wong, thank you for being here. We will start with you.

**STATEMENT OF ROBB WONG, ASSOCIATE ADMINISTRATOR,
OFFICE OF GOVERNMENT CONTRACTING AND BUSINESS DE-
VELOPMENT, U.S. SMALL BUSINESS ADMINISTRATION,
WASHINGTON, DC**

Mr. WONG. Good afternoon, and thank you for the opportunity to testify and talk about the contracting and business development programs provided by SBA.

Since March 2017, I have served as the Associate Administrator for the Office of Government Contracting and Business Development. This is my second time at SBA, previously having worked before in the agency's Office of General Counsel, where I wrote many of the rules and regulations in the previous state.

In my current role, I administer programs and services that assist small businesses in meeting the requirements to receive government contracts. The Federal Government spends nearly \$500 billion a year on goods and services through contracting, and there are government-wide goals for awards to small businesses that the SBA helps to foster and support.

Since rejoining the agency over two years ago, my focus has been on Federal contracting officers across the Federal Government, and my goal has been simple—to make SBA-certified companies a better option for the contracting officer so that they will increase the supply of government contracts to small business.

We have looked at barriers that contracting officers may face in hitting their percentage goals. We want to grow the ecosystems by increasing the number of companies in that system, and we want to improve the quality of contracts. Again, it will help the contract officer to continue to award contracts to small business.

As a foundation, SBA established and continues to refine our online platform, Certify.gov. Working with our CIO, Maria Roat, we brought the governance of the platform in-house. Our next steps are to improve its functionality and interactivity, not only for the public but also for our SBA analysts and staff. This should help create a reliable tool to support the transition of the women-owned small business certifications as well as for any future considerations with certifying service-disabled veteran-owned small businesses.

Right now, the agency certifies over 10,000 companies in our 8(a) and HUBZone programs. The woman-owned and service-disabled certifications total over 20,000. Adding that amount of volume and responsibility to our existing staff, without additional funding, is something the agency continues to wrestle with.

Adding to these challenges are aspects of the self-certification process that my GAO colleague, Mr. Shear, has highlighted. We have also been testing a unified application process to help standardize the way that the public applies and also how SBA reviews both eligibility and continuing eligibility. All of this must occur before we add the volume of new cases from the WOSB Program, Women-Owned Small Business Program. Excuse me.

Next, let me update you on an issue that I know is of interest to the members of the Committee. In late December, SBA released an information notice to stakeholders regarding the Runway Extension Act. Since then, we have worked to develop a rule which was sent to the Federal Register on Monday. When published, this will further advise stakeholders and will begin a public comment period to receive their input.

I wanted to close by mentioning a few items that our program office continues to assess and that might lead to further discussion with the Committee.

We continue to look at the Federal appropriations cycle and any effect it may have on contracting officers. We continue to review

category management and whether it is hurting contract availability. We also continue to assess sole-source thresholds and whether they need to be adjusted.

I connect these items back to my main goal, to help the contracting officers and to make small businesses a better option for them. In my view, these items impair the government's mission, as well as those people who help to accomplish it. These are all important factors in keeping small businesses in our Federal contracting programs, as every time a small business drops out it hurts our industrial base.

Thank you again for the opportunity to testify, and I look forward to working with you.

[The prepared statement of Mr. Wong follows:]



**Statement of Robb Wong
Associate Administrator
Office of Government Contracting and Business Development
U.S. Small Business Administration**

**before the
Senate Committee on Small Business and Entrepreneurship
Hearing on "Reauthorization of SBA's Contracting Programs"**

June 12, 2019

**Statement of Robb Wong
Associate Administrator
U.S. Small Business Administration**

Thank you, Chairman Rubio, Ranking Member Cardin, and members of the committee. I appreciate the opportunity to testify today about the contracting and business development programs provided by the U.S. Small Business Administration (SBA).

Since March 2017, I have served as the Associate Administrator for the Office of Government Contracting and Business Development (GCBD). This is my second time serving at SBA having previously worked in the agency's Office of General Counsel (OGC). Through my work in OGC, I also served in the field as a special assistant and attorney in SBA's Houston District Office, and later, as a counsel and acting district director in our Lubbock District Office.

In my role with GCBD, I oversee contracting and procurement activity for small businesses across the federal government. Our program office administers programs and services that assist small businesses in meeting the requirements to receive government contracts, either as prime contractors or subcontractors. Federal agencies conduct a variety of procurements that are reserved exclusively for small business participation. These set-asides can be for small businesses in general, or specific for HUBZone certified small business concerns, 8(a) certified small business concerns, service-disabled veteran-owned small business concerns, or women-owned small business concerns.

The federal government spends nearly \$500 billion a year on goods and services through contracting. The Small Business Act establishes a government-wide goal at not less than 23% of prime contract awards go to small businesses. I am happy to report that agencies have achieved record highs over the past few years, exceeding the 23% goal, and that the federal government has increased the number of dollars awarded to small businesses. In 2017, we reached a record \$105 billion to small businesses, and we expect to greatly exceed that in 2018. This has meant more contracts, meaning more revenue, for small businesses and more jobs.

SBA negotiates annually with each federal agency on small business goals and ensures that a certain percentage of federal contract awards goes to small businesses. SBA works collaboratively with agencies to make sure that small businesses get maximum practicable opportunities to provide goods and services to our government. SBA fosters participation by small, disadvantaged, service-disabled veteran owned, and women-owned small businesses in federal government contract awards. Within the government-wide 23% goal, there are specific goals of 5% to women-owned small businesses, 3% to service-disabled veteran-owned small businesses, 5% to small disadvantaged businesses, and 3% to HUBZone firms.

SBA has four small business contracting programs which provide tools to help us achieve these goals. The 8(a) program, for small business concerns owned and controlled by socially and economically disadvantaged individuals, is the most used small business certification program. The HUBZone program serves small businesses located in historically underutilized business zones. Both programs require SBA certification. Additionally, there are two programs for service

disabled veteran-owned small businesses and for women-owned small businesses that currently require only self-certification. We have tried to improve the internal processes and policies around these four contracting programs with two objectives in mind. First, we want to improve the usefulness of SBA certifications to the public and the federal government, and we want to guard the public trust so that when an SBA certified company is awarded a contract, they are eligible to receive it.

Next, let me address a few items our program office has been working on. We will soon report that the HUBZone Program achieved its best contracting performance in FY18, in terms of contract value since 2011 and in terms of percentage since 2012. While we have not yet attained the government-wide three percent goal, we continue to make progress. We are finalizing a new set of HUBZone regulations that will simplify the program, making it easier for a firm to maintain compliance, and more attractive for acquisition agencies to set-aside contracts for HUBZone small businesses. We are also planning to leverage HUBZone contracting authorities with the Administration's Opportunity Zones Initiative. This dovetails with the program's purpose to produce, through contracts, economic development, job growth and capital formation, in America's most distressed communities.

Two other initiatives within our program office involve rulemaking processes for implementation of the Small Business Runway Extension Act and a five-year review of size standards. SBA has just completed and will be publishing a proposed rule, making necessary revisions to its regulations to implement the Runway Extension Act. While the new law increased the averaging period for calculating annual revenue for businesses in services industries only, for consistency, the SBA is proposing to apply the same 5-year averaging period for all other businesses subject to revenue-based size standards.

With respect to small business size standards in general, the Small Business Act requires that the agency review size standards at least once every five years and make appropriate adjustments to reflect current market conditions. SBA completed the first 5-year review of size standards in early 2016, in which SBA adjusted upwards about 60% of more than 1,000 size standards, enabling more than 72,000 of businesses to gain or retain their small business status. Currently, SBA is in the process of conducting the second 5-year review. As part of that effort, in April 2019, SBA issued a revised white paper on "Size Standards Methodology" and will roll out a series of proposed rules later this year, starting with receipts-based size standards.

SBA also has just completed an interim final rule on the 5-year adjustment of all monetary-based industry size standards for inflation, which is expected to be published in a few weeks. This will raise all monetary-based size standards by the amount of inflation that occurred since the last inflation adjustment in 2014.

Another recent rulemaking to make the committee aware of involves the women-owned small business contracting program. On May 14, the SBA announced a proposed rule change for the WOSB program. This rule would eliminate the current self-certification option, give firms seeking WOSB or EDWOSB certification the opportunity to apply to and receive certification from SBA, and require Third Party Certifiers to notify applicants of fees. The proposed rule will

bolster the number of federal contract awards and better empower agencies to meet the 5% federal contracting goal for women-owned small businesses. Public comment closes on July 15.

Thank you again for the opportunity to testify. We look forward to continuing to work with you on behalf of America's small businesses.

Chairman RUBIO. Thank you. Mr. Shear.

STATEMENT OF WILLIAM SHEAR, DIRECTOR, FINANCIAL MARKETS AND COMMUNITY INVESTMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, WASHINGTON, DC

Mr. SHEAR. Chairman Rubio, Ranking Member Cardin, and members of the Committee, I am pleased to be here this afternoon to discuss our recent work on SBA's contracting programs and SBA's progress in implementing our recommendations.

My testimony today is based primarily on three reports we issued between September 2018 and March 2019, and also a report we issued in October of 2014. I will discuss SBA's progress on implementing our prior recommendations on first, its women's procurement program, second, its HUBZone program in Puerto Rico, and third, SBA's Procurement Scorecard. In the interest of time, I will largely focus on our work on the women's procurement program in my oral statement.

SBA has not fully addressed deficiencies we have previously identified for the women's procurement program, and these deficiencies are affected by SBA's ongoing implementation of changes to the program authorized by the National Defense Authorization Act of 2015. SBA implemented one of the three changes to the program authorized in the 2015 NDAA when it published a final rule to implement sole-source authority, which became effective October 2015. The two other changes, authorizing SBA to implement its own certification process, and requiring SBA to eliminate the option for firms to self-certify that they are eligible for the program, have not been implemented.

In addition, SBA has not fully addressed program oversight deficiencies described in our March 2019 report, and first identified in our October 2014 report. We recommended that SBA establish comprehensive procedures to monitor and assess the performance of the third-party certifiers in accordance with their agreements with SBA and program regulations.

SBA conducted a compliance review of certifiers in 2016, but SBA officials said, in June 2018, that SBA had no plans to conduct further compliance reviews until the final rule implementing the new certification process was completed. SBA also has not fully addressed deficiencies related to eligibility exams. The exams identified high rates of potentially ineligible businesses. SBA does not collect reliable information on the results of its annual eligibility exams and continues to have no mechanism to look across exams for common eligibility issues to inform the program.

With respect to SBA's HUBZone program, we have a large body of work over a period of time addressing the program. In our September 2018 report, that focused on Puerto Rico, we identified internal control deficiencies related to the certification and recertification process that were generally consistent with the deficiencies identified in previous work. We are awaiting documentation from SBA related to the agency's planned changes to the certification and recertification process.

Finally, SBA has taken some steps to address recommendation of our September 2018 report about its Procurement Scorecard. SBA made revisions to address requirements specified in the

NDAA for fiscal year 2016. Among other actions in response to our recommendations, SBA has proposed a two-phase program evaluation of the scorecard.

Phase 1 would include a report to Congress, planned to be issued in September 2019, on the impact of the small business procurement goal program for Chief Financial Officers Act agencies and to provide a recommendation on continuing, modifying, expanding, or terminating the scorecard program. In Phase 2, SBA plans to conduct a program evaluation that investigates the effectiveness of the Small Business Contracting Scorecard on Federal agencies, small business contracting goal achievement.

Chairman Rubio, Ranking Member Cardin, and members of the Committee, this completes my prepared statement. I look forward to your questions.

[The prepared statement of Mr. Shear follows:]



United States Government Accountability Office

Testimony
Before the Committee on Small
Business and Entrepreneurship,
U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. ET
Wednesday, June 12, 2019

SMALL BUSINESS ADMINISTRATION CONTRACTING PROGRAMS

Additional Efforts Needed to Implement GAO Recommendations

Statement of William B. Shear, Director,
Financial Markets and Community Investment

GAO Highlights

Highlights of GAO-19-623T, a testimony before the Committee on Small Business and Entrepreneurship, U.S. Senate

Why GAO Did This Study

Federal agencies conduct a variety of procurements that are reserved for small business participation through small business set-asides. These set-asides can be for small businesses in general, or they can be specific to small businesses that meet additional eligibility requirements in programs such as those for WOSB or HUBZone. SBA administers both the WOSB and HUBZone programs. SBA also produces an annual Small Business Procurement Scorecard to measure how much contracted spending federal agencies allocate to small businesses and whether the federal government is meeting its goals for awarding contracts to small businesses.

GAO issued three reports between September 2018 and March 2019 on SBA contracting programs (see GAO-18-666, GAO-18-672, and GAO-19-168). This testimony is primarily based on these three reports and discusses prior GAO findings and SBA's progress on implementing GAO's recommendations on (1) the WOSB program, (2) the HUBZone program, and (3) SBA's procurement scorecard.

To update the status of prior recommendations, GAO reviewed updates from SBA and interviewed officials.

View GAO-19-623T. For more information, contact William B. Shear at (202) 512-8678 or shearw@gao.gov.

June 12, 2019

SMALL BUSINESS ADMINISTRATION CONTRACTING PROGRAMS

Additional Efforts Needed to Implement GAO Recommendations

What GAO Found

The Small Business Administration (SBA) has not fully implemented GAO's prior recommendations to address oversight deficiencies in the Women-Owned Small Business (WOSB) and Historically Underutilized Business Zone (HUBZone) programs and to improve evaluation of its procurement scorecard. GAO maintains that its recommendations should be addressed.

Women-Owned Small Business Program. In its March 2019 report, GAO found that SBA had not addressed WOSB program oversight deficiencies identified in GAO's 2014 report (GAO-15-54). For example, GAO had found that SBA did not have procedures related to reviewing the performance of the four third-party certifiers—private entities approved by SBA to certify the eligibility of WOSB firms—as well as information the certifiers submitted to SBA. GAO recommended that SBA establish procedures to assess the performance of the certifiers and the information they submitted. While SBA conducted a compliance review of the certifiers in 2016, SBA said in June 2018 that it had no plans to conduct further compliance reviews until a final rule implementing a new certification process was completed. SBA officials said that they expected the rule to be implemented by June 2021. By waiting to improve its oversight of the WOSB program, SBA cannot provide reasonable assurance that certifiers are complying with program requirements and cannot improve its efforts to identify ineligible firms or potential fraud.

HUBZone Program. In September 2018, GAO reported that it had reviewed case files for a nongeneralizable sample of 12 firms in Puerto Rico that received HUBZone certification between March 2017 and March 2018 and found that SBA did not consistently document or follow its policies and procedures for certification reviews. For example, SBA did not have complete documentation in nine of 12 cases and did not follow its policy to conduct three levels of review when determining whether to approve or deny a firm in four of 12 cases. As a result, SBA did not have reasonable assurance that firms meet HUBZone criteria. SBA said that it planned to implement GAO's recommendations that SBA (1) update internal policy manuals for certification and recertification and (2) conduct and document reviews of staff compliance with relevant procedures. However, as of May 2019, SBA had not provided documentation showing that it had completed these planned actions.

Small Business Procurement Scorecard. For fiscal year 2017, SBA revised the methodology for its Small Business Procurement Scorecard, which assesses the efforts of federal agencies to support contracting with small businesses. For example, one revision reduced the share of the total scorecard grade devoted to prime contracting achievement (the dollar amount of contracts awarded directly to small businesses). GAO recommended in September 2018 that SBA design and implement a comprehensive evaluation to assess the scorecard revisions. Since that report was issued, SBA has proposed but not yet implemented a two-phase evaluation of the scorecard to include an evaluation of the scorecard's effect on federal agencies achieving small business contracting goals. SBA said that it expects to complete phase one by September 2019 and has not provided a time frame for phase two.

Chairman Rubio, Ranking Member Cardin, and Members of the Committee:

I am pleased to be here today to discuss our recent work on the Small Business Administration's (SBA) contracting programs and SBA's progress in implementing our recommendations. Federal agencies conduct a variety of procurements that are reserved for small business participation through small business set-asides. These set-asides can be for small businesses in general, or they can be specific to small businesses that meet additional eligibility requirements, such as those for SBA's Women-Owned Small Business (WOSB) or Historically Underutilized Business Zones (HUBZone) programs.¹ SBA also produces an annual Small Business Procurement Scorecard (scorecard) to measure how much contracted spending federal agencies allocate to small businesses and whether the federal government is meeting its goals for awarding contracts to small businesses.

My testimony today is based primarily on three reports we issued between September 2018 and March 2019, as well as a report we issued in October 2014.² I will discuss SBA's progress on implementing our prior recommendations on (1) the WOSB program, (2) the HUBZone program in Puerto Rico, and (3) SBA's procurement scorecard.

To conduct the work on the WOSB program, we reviewed relevant laws, regulations, and program documents; analyzed federal contracting data from April 2011 through June 2018; and interviewed SBA officials, officials from contracting agencies selected to obtain a range of experience with the WOSB program, and three of the four private third-

¹Congress authorized the WOSB program in 2000, allowing contracting officers to set aside procurements to women-owned small businesses in industries in which they are substantially underrepresented. The purpose of the HUBZone program is to provide federal contracting preferences to qualified small businesses located in economically distressed communities (referred to as HUBZones) that employ residents of the areas.

²GAO, *Women-Owned Small Business Program: Actions Needed to Address Ongoing Oversight Issues*, GAO-19-168 (Washington, D.C.: Mar. 14, 2019); *Small Business Contracting: Small Business Administration Could Further Strengthen HUBZone Eligibility Reviews in Puerto Rico and Programwide*, GAO-18-666 (Washington, D.C.: Sept. 24, 2018); *Small Business Administration: Actions Needed to Improve Confidence in Small Business Procurement Scorecard*, GAO-18-672 (Washington, D.C.: Sept. 27, 2018); and *Women-Owned Small Business Program: Certifier Oversight and Additional Eligibility Controls Are Needed*, GAO-15-54 (Washington, D.C.: Oct. 8, 2014).

party certifiers.³ For our HUBZone report, we analyzed SBA documents and reviewed files of a nongeneralizable sample of 12 firms located in Puerto Rico that received certification between March 2017 and March 2018. We also interviewed SBA officials, representatives from HUBZone-certified firms in Puerto Rico, and local economic development agencies in Puerto Rico. To conduct the work on SBA's procurement scorecard, we analyzed SBA's prior and revised scorecard methodology and results and interviewed officials from SBA, four other federal agencies selected based on small business procurement volume and other attributes, and three groups representing the interests of small businesses. To update the status of recommendations from these reports, we reviewed updates from SBA and interviewed officials. We conducted the work on which this testimony is based in accordance with generally accepted government auditing standards. More details on our methodology can be found in the three reports on which this testimony is based.

SBA Has Not Fully Addressed Deficiencies in Oversight and Implementation for the WOSB Program

SBA has not fully addressed deficiencies we have previously identified for the WOSB program, and these deficiencies are affected by SBA's ongoing implementation of changes to the program authorized by the National Defense Authorization Act of 2015 (2015 NDAA). As of early June 2019, SBA had implemented one of the three changes to the program authorized in the 2015 NDAA.⁴ Specifically, in September 2015 SBA published a final rule to implement sole-source authority (to award contracts without competition), effective October 2015. The two other changes—authorizing SBA to implement its own certification process for WOSBs and requiring SBA to eliminate the option for firms to self-certify that they are eligible for the WOSB program—had not been implemented.⁵ On May 14, 2019, SBA published in the Federal Register a proposed rule that eliminates the self-certification option and describes a potential certification process to be administered by SBA.⁶ SBA officials have stated that the agency will not eliminate self-certification until the

³To be eligible to participate in the WOSB program, firms have the option to self-certify or be certified by a third-party certifier.

⁴GAO-19-168.

⁵The 2015 NDAA expanded the WOSB certification process to include certification by the SBA Administrator, in addition to the previously approved methods of certification by a federal agency, a state government, or a national certifying entity approved by SBA.

⁶Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business – Certification, 84 Fed. Reg. 21256 (May 14, 2019).

new certification process for the WOSB program is in place, which they expect to implement by June 2021.

In addition, SBA has not fully addressed WOSB program oversight deficiencies described in our March 2019 report and first identified in our 2014 report.⁷ We reported that SBA did not have formal policies for reviewing the performance of its four approved third-party certifiers (private entities approved by SBA to certify the eligibility of WOSB firms), including their compliance with their agreements with SBA. Further, we found that SBA had not developed formal policies and procedures for, among other things, reviewing the monthly reports that certifiers submit to SBA.⁸ We recommended that the Administrator of SBA establish comprehensive procedures to monitor and assess the performance of the third-party certifiers in accordance with their agreements with SBA and program regulations. While SBA has taken some steps to address our recommendation, including conducting a compliance review of the certifiers in 2016, SBA officials said in June 2018 that SBA had no plans to conduct further compliance reviews until the final rule implementing the new certification process was completed. By waiting to improve its oversight of the WOSB program, SBA cannot provide reasonable assurance that certifiers are complying with program requirements and cannot improve its efforts to identify ineligible firms or potential fraud. In addition, the implementation of sole-source authority in light of these continued oversight deficiencies can increase program risk. Consequently, we maintain that our recommendation should be addressed.

SBA also has not fully addressed deficiencies related to eligibility examinations that we described in our March 2019 report and first identified in our October 2014 report. We found that SBA lacked formalized guidance for its eligibility examination processes and that the examinations identified high rates of potentially ineligible businesses. As a result, we recommended that SBA enhance its examination of businesses that register for the WOSB program to ensure that only eligible businesses obtain WOSB set-asides. Specifically, we suggested that SBA should take actions such as (1) completing the development of procedures to conduct annual eligibility examinations and implementing

⁷GAO-15-54.

⁸Per their written agreements with SBA, the third-party certifiers are required to submit monthly reports to SBA describing WOSB program performance information.

such procedures; (2) analyzing examination results and individual businesses found to be ineligible to better understand the cause of the high rate of ineligibility in annual reviews and determine what actions are needed to address the causes, and (3) implementing ongoing reviews of a sample of all businesses that have represented their eligibility to participate in the program.

SBA has taken some steps to implement our recommendation, such as including written policies and procedures for WOSB program eligibility examinations in a standard operating procedure and a Desk Guide. However, SBA does not collect reliable information on the results of its annual eligibility examinations. In addition, SBA continues to have no mechanism to look across examinations for common eligibility issues to inform the WOSB program. As we noted in 2014, by not analyzing examination results broadly, the agency is missing opportunities to obtain meaningful insights into the program, such as the reasons many businesses are deemed ineligible.

Further, SBA still conducts eligibility examinations only of firms that have already received a WOSB award. Restricting the samples in this way limits SBA's ability to better understand the eligibility of businesses before they apply for and are awarded contracts, as well as its ability to detect and prevent potential fraud.

We recognize that SBA has made some effort to address our recommendation by documenting procedures for conducting annual eligibility examinations of WOSB firms. However, without maintaining reliable information on the results of eligibility examinations, developing procedures for analyzing results, and expanding the sample of businesses to be examined to include those that did not receive contracts, SBA limits the value of its eligibility examinations and its ability to reduce ineligibility among businesses registered to participate in the WOSB program. Leading fraud risk management practices state that federal program managers should design control activities that focus on fraud prevention over detection and response, to the extent possible.⁹ The deficiencies in SBA's oversight of the WOSB program limit SBA's ability to identify potential fraud risks and develop any additional control activities needed to address these risks. As a result, the program may

⁹GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: July 2015).

continue to be exposed to the risk of ineligible businesses receiving set-aside contracts. In addition, in light of these continued deficiencies, the implementation of sole-source authority without addressing the other changes made by the 2015 NDAA could increase program risk. For these reasons, we maintain that our previous recommendation that SBA enhance its WOSB eligibility examination procedures should be addressed.

In addition, similar to previous findings from SBA's Office of Inspector General, our March 2019 report found that about 3.5 percent of contracts using a WOSB set-aside were awarded for ineligible goods or services from April 2011 through June 2018.¹⁰ At that time, SBA was not reviewing contracting data that could identify this problem and inform SBA which agencies making awards may need targeted outreach or training. As a result, we found that SBA could not provide reasonable assurance that WOSB program requirements were being met and that the program was meeting its goals. We recommended that SBA develop a process for periodically reviewing the extent to which WOSB program set-asides are awarded for ineligible goods or services and use the results to address identified issues, such as through targeted outreach or training to agencies making awards under the ineligible codes. In early May 2019, SBA said that it had initiated such efforts.

¹⁰GAO-19-168. See also Small Business Administration Office of Inspector General, *Improvements Needed in SBA's Management of the Women Owned Small Business Federal Contracting Program*, SBA OIG Report 15-10 (Washington, D.C.: May 14, 2015) and *SBA's Women-Owned Small Business Contracting Program*, SBA OIG Report 18-18 (Washington, D.C.: June 20, 2018).

SBA Has Not Yet Implemented Recommendations to Improve the HUBZone Certification Process

In September 2018, we found that although SBA had adopted criteria and guidance for a risk-based approach to certifying and recertifying firms for the HUBZone program in March 2017, the extent to which it conducted a risk assessment to inform its approach was unclear.¹¹ In 2015, we found that SBA lacked key controls for its recertification process and recommended that SBA assess the process.¹² In 2009, SBA increased documentation requirements for certification but not recertification (which determines continued program eligibility every 3 years). In March 2017, SBA changed its recertification criteria and guidance to require firms with \$1 million or more in HUBZone contract awards to provide documentation to support continuing eligibility. During our work for the September 2018 report, SBA officials stated they had completed a risk assessment of the HUBZone recertification process, but did not provide us with documentation on when they performed the risk assessment, which risks were identified and considered, or what analysis established the \$1 million threshold. As of May 2019, SBA had not provided documentation showing that it had performed the risk assessment, but we maintain that an assessment of the recertification process would help inform a risk-based approach to reviewing and verifying information from firms that appear to pose the most risk to the program. In addition, SBA had not provided documentation showing that a technology-based solution designed to address some of the ongoing challenges with the recertification process had been implemented. SBA officials had previously estimated this solution would be available first in spring 2017 and then by the end of calendar year 2017.¹³

We also found in our September 2018 report that, based on our review of case files for a nongeneralizable sample of 12 firms in Puerto Rico that received HUBZone certification between March 2017 and March 2018, SBA did not consistently document or follow its policies and procedures for certification reviews:

¹¹GAO-18-666.

¹²See GAO, *Small Business Contracting: Opportunities Exist to Further Improve HUBZone Oversight*, GAO-15-234 (Washington, D.C.: Feb. 12, 2015).

¹³See GAO, *HUBZone Program: Opportunities Exist to Further Improve Oversight*, GAO-16-866T (Washington, D.C.: Sept. 7, 2016); and *HUBZone Program: Oversight Has Improved But Some Weaknesses Remain*, GAO-17-456T (Washington, D.C.: Mar. 2, 2017).

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- SBA did not have complete documentation in nine of 12 cases. SBA officials described alternative procedures they used to determine firms' eligibility, but SBA had not updated its internal policy manuals to reflect these procedures, and analysts did not document use of such procedures in the files we reviewed. As a result, SBA did not have reasonable assurance that firms met HUBZone criteria.
 - In four of 12 cases, SBA did not follow its policy to conduct three levels of review (by an analyst, a senior analyst, and the program director or deputy) when determining whether to approve or deny a firm.
 - It was unclear to what extent SBA reviewed staff compliance with certification and recertification review procedures. SBA provided an assurance letter stating that it evaluated the Office of HUBZone's internal controls and concluded the controls were effective, but the letter did not specify what steps SBA took for the evaluation.

We recommended that SBA (1) update its internal policy manuals for certification and recertification reviews to reflect existing policies and procedures not currently in written guidance and (2) conduct and document reviews of staff compliance with procedures associated with HUBZone certification and recertification. In response to our report, SBA said that it planned to update its internal policies on certification and recertification by issuing a procedural notice and to begin reviewing and documenting staff compliance with the updated procedures outlined in the notice. However, as of May 2019, SBA had not provided documentation showing that it had completed these planned actions.

SBA Has Taken Some Steps to Address Recommendations about the Procurement Scorecard

In September 2018, we found that for fiscal year 2017, SBA revised the methodology for its Small Business Procurement Scorecard, which is used to assess federal agencies' progress toward small business procurement goals.¹⁴ SBA made revisions to address requirements specified in the National Defense Authorization Act for Fiscal Year 2016. SBA (1) reduced the share of the total scorecard grade devoted to prime contracting achievement, which is the dollar amount of contracts awarded directly to small businesses, and (2) added an element calculating changes in the number of small businesses receiving prime contracts. SBA made two additional revisions—with input from other agencies' representatives—to increase the share of subcontracting achievement

¹⁴GAO-18-672.

results and the share of the peer review of required activities designed to facilitate small business procurement. In July 2018, officials said they had begun developing a plan to evaluate the effects of the revised scorecard methodology but did not provide a draft plan. Conducting a well-designed and comprehensive evaluation could aid SBA in determining whether the scorecard is an effective tool for helping to achieve the agency's strategic goals.

In our September 2018 report, we also found that the published fiscal year 2017 scorecards originally contained errors, including an incorrect grade and numeric score for one agency, and SBA does not have a process to ensure that scorecard results are published accurately. Although SBA later corrected the errors, it did not initially document that scorecards had been changed, which is inconsistent with SBA's policy on information quality. SBA officials said that errors occurred in the process of formatting scorecards for publication. Errors in the published scorecards—and the initial lack of disclosure about corrections—weakens data reliability and may undermine confidence in scorecard data.

We recommended that SBA (1) design and implement a comprehensive evaluation to assess scorecard revisions and (2) institute a process for reviewing scorecards for accuracy prior to publication and a mechanism for disclosing corrected information. Since our report, SBA has proposed a two-phase program evaluation of the scorecard. SBA officials said that they plan for phase one to include a report to Congress on the impact of the small business procurement goal program for Chief Financial Officers Act agencies and to provide a recommendation on continuing, modifying, expanding, or terminating the scorecard program.¹⁵ SBA plans to provide the phase one report in September 2019. In phase two, SBA plans to conduct a program evaluation that investigates the effectiveness of the small business contracting scorecard on federal agency small business contracting goal achievement. SBA has not provided a time frame for phase two. With respect to the second recommendation, SBA officials said that SBA has developed a procedure that includes a prepublication review process for procurement scorecards. The officials said the procedure identifies responsibilities, provides for an independent peer review, and includes supervisory review. Officials said the procedure also

¹⁵The Chief Financial Officers Act of 1990, Pub. L. No. 101-576, established chief financial officers to oversee financial management activities at 23 major executive departments and agencies. The list now includes 24 entities, which are often referred to collectively as Chief Financial Officers Act agencies.

includes measures for post-publication review and corrections. We will review supporting documentation for this new procedure to assess whether this recommendation can be closed as implemented.

Chairman Rubio, Ranking Member Cardin, and Members of the Committee, this completes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

GAO Contact and Acknowledgments

If you or your staff have any questions about this testimony, please contact William Shear, Director, Financial Markets and Community Investment at (202) 512-8678 or shearw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Andrew Pauline (Assistant Director), Paige Smith (Assistant Director), Winnie Tsen (Assistant Director), and Jennifer Schwartz.

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Chairman RUBIO. Thank you. I will just start with—in the interest of time and for our members that have other places as well, because we started late, so I am just going to ask two questions and they are related.

Mr. Wong, in 2015, Congress passed that law requiring the SBA to set up the certification program for the Women-Owned Small Business Programs. It has been four years. They have yet to comply. What authority does the SBA have not to comply with law, and why has it not complied?

Mr. WONG. The answer to your first question, we do not have that authority to not comply, and the reason that we have not complied was certainly brought to my attention, and it is something I have worked on since the first month that I have been here. I am a lawyer by trade, so being out of compliance with the law is absolutely unacceptable.

The challenge we have had, sir, is basically this. We have an ecosystem that we have looked at, that we have certain responsibilities with our certifications to make sure that the right companies get into our program that are qualified, but then we also have to make sure, before they get a contract, we hold the public trust to make sure that anyone who is awarded a contract with an SBA certification is actually eligible to receive it. Then we have to make the process easier to make sure that we can help the contracting officer with the supply of contracts.

As you noted in your statement earlier, we are dealing with a system where we had, for 8(a) and for HUBZone, and then potentially WOSB—excuse me, Women-Owned Small Businesses—we had three different silos. So literally what happened was if you—we—if you gave the element of ownership to three different people, they had three different systems on how to evaluate this program. That is unacceptable as well.

So when we were looking at WOSB, one of the first things I looked at was I realized that when I looked at the volume of applications we had and the number of existing companies that we had, we realized that we had three times the volume for the potential WOSB program that we had for any of our other programs, particular the 8(a) program, which has been around for 30 years.

Chairman RUBIO. Just on this topic, I know you have been there a month so you are trying to comply now. Correct?

Mr. WONG. Yes. Absolutely.

Chairman RUBIO. Do you have any explanation? In the month that you have been there, have you discovered why nothing has happened in the last four years?

Mr. WONG. Yes. So—and just to clarify, I have been here a little bit over two years, but within one month of me being there, two years ago, I tried to get a handle on what was going on.

The short version of what we are trying to do is we should be processing all of our applications the same way, to the extent possible. So what we have done is we have re-engineered all of these processes to match. In short, we have 8(a), which is our historically best program. We broke that down into elements of eligibility, which there are 11. Then we realized with HUBZone there are six. And then we even went into each element of eligibility and we de-

terminated the process of how you actually determine if someone is qualified under each—

Chairman RUBIO. What I am just trying to wrap my mind around—

Mr. WONG. Yes, sir.

Chairman RUBIO [continuing]. You have been there two years. Within a month of getting there you started looking at this.

Mr. WONG. Yes.

Chairman RUBIO. You have now been there for over two years—

Mr. WONG. Yes.

Chairman RUBIO [continuing]. And you are still going through this process of trying to organize it so you can address it.

Mr. WONG. Yes. Originally, what we had done was we had come back to Congress—

Chairman RUBIO. It does not take two years to do that, and it has not yet happened.

Mr. WONG. Yes, because we had to try three times now to come up with a solution that we thought would be palatable for Congress. Yes, sir.

Chairman RUBIO. Okay. Well, let me—Mr. Shear, let me ask you. You have seen—well, the—they failed to implement the mandates from the 2015 NDAA on the Women-Owned Small Business Program. Will the new proposed rule really fix the certification program?

Mr. SHEAR. A new rule, whether the one proposed or another rule, is not going to fix the problem. The question is how does SBA implement this? We have seen a situation where SBA is not vigilant on either overseeing third-party certifiers or of collecting accurate information when there are businesses that do not seem to be eligible participating in the program, and following up and looking for the underlying reasons.

We have made recommendations to SBA in a self-certified environment that we think not only are relevant for the self-certified environment but the environment that would be created by a new certification process. We also think that our recommendations would help inform that process.

So our concern—

Chairman RUBIO. Are those recommendations reflected in the proposed rule?

Mr. SHEAR. In the proposed rule, the proposed rule which I do not want to get into, third-party certifiers versus the use of SBA on its own, but what they all have in common is that there is a lack of understanding and a lack of focus, like on following up.

In 2016, there was a review of third-party certifiers, which not only could inform what job are they doing but could help inform what makes for good certification process. They had a recommendation having to do with eligibility exams, where they seemed to be starting, in 2016, to start looking at the underlying causes. But both of those seem to have been suspended for a rulemaking and we really cannot understand why.

And it is also a mystery to us, just as I think it is something that you raised, which is a very good point. Why has it taken so long to—you know, without getting into the merits of the proposed rule,

why has it taken so long to get this proposed rule out? We really do not understand. When we first asked for a timeline, a project plan for how they were going to get from A to B, they have never been able to produce that. So that raises another concern for us.

Chairman RUBIO. Well, the concern that I have is all those women-owned small businesses that should have qualified and could have qualified but were bumped out of the queue by the ones that should not have, because of the inaction that has taken so long to get even to this point.

Ranking Member.

Senator CARDIN. Quite frankly, this is not acceptable. We have a certification process right now for the 8(a) program and HUBZone, so it is not like SBA does not know how to do certifications. It is hard for us to understand why the women-owned small businesses have not progressed. So do we have a target date when we are going to—when you are going to be able to give us something specific on this, when that date is?

Mr. WONG. The target—it should be contemporaneous with the WOSB rule. I misstated this in the hearing we had a couple of weeks ago, as 2021, but it should be contemporaneous with the rule in July 1st of 2020.

Senator CARDIN. Okay. So it will be another year.

Mr. WONG. Yes, but that—the rule is about as far as we can push it, but we want to make sure. What I have told our staff is we need to make sure that—

Senator CARDIN. That is not really—that is not acceptable. So we will look at what we can do to—you know, it is challenging for us. We passed a statute and we expect it to be implemented.

Mr. WONG. I agree.

Senator CARDIN. And I think what the Chairman said is absolutely accurate. These are extremely important programs. We want to make sure that qualified companies can benefit from it. I think we all agree that SBA certification is where we need to be—

Mr. WONG. Yes.

Senator CARDIN [continuing]. And we are not there. So it is—it remains a matter of frustration.

We will look at whether we cannot give you a little bit more directive way to speed this up. I understand rulemaking takes time. Believe me I do. But this is unacceptable.

I want to get to the point in my opening statement on the number of small businesses and the decline in the number of small businesses participating, and talk a little bit about why we do not have a larger supply base, why SBA has not encouraged that. We have category management, as I understand it, on procurement, which aims at larger contracts, which is a disadvantage for small companies, particularly if their only entry is through subcontracting.

So what strategies can be deployed to get new small companies involved in government procurement to counter the trends that we have seen over the last several years?

Mr. WONG. In my opinion, sir, there are two things that we could do. If we could exempt small business programs from category management—if you look at what we do, we represent the under-

served. We represent 23 percent. We fight every year to make 23 percent.

Senator CARDIN. I am sorry. I was listening. I was just telling my staff to—whether you need legislative authority to exempt from category management?

Mr. WONG. Probably.

Senator CARDIN. Well, why don't we find out whether you need statutory authority or whether you can do that administratively.

Mr. WONG. Even still, the specter of category management I think is a good idea. Efficiency is always important. However, the way that it is being applied now to small businesses has a deleterious effect. The MAC report that came out even proves that we are losing small businesses on both ends for two different reasons, in my opinion.

What happens is that we just have, even as recently as last Friday, we get calls from small businesses, for example, in our 8(a) program. With our 8(a) program you get a certification, but we tell you that you have to do your own marketing and that will determine the success of your own business. Well, we have people that are relying on that and they are working really hard, and they win these contracts, and they win these large contracts and then they call us and they say, "The government is taking our contract away, putting it into a category management vehicle, and we do not qualify for that vehicle. So we worked hard to get this exactly like you said and now you took it away from us."

And for the small businesses, a lot of small businesses—and I have been a small business owner for 20 years before this, and I have worked with this industry for at least 30 years. They do not have lots of contracts to replace that with, and often if that is their mainstay contract they lose faith in the program, they lose faith in government contracting, so they quit. So we lose people from—

Senator CARDIN. I understand what you are saying. I might also say the Army Futures Command in procurement also raises an issue whether that is going to be another hurdle that works to the disadvantage of small companies. I want to explore the exemption issues that you are talking about, because I think that does not make sense.

I also would hope that we could work on reporting information on prime and subcontracting so that we have a better understanding of how we can get direct business for smaller companies rather than having to work as prime contractors.

Mr. WONG. Absolutely.

Senator CARDIN. And one last point, and that is the Small Business Roadway Extension Act. You mentioned that a rule is being promulgated, I think today or yesterday, in your testimony. That is already late. I would urge you to make sure that is implemented as quickly as you are able to do it. It does not seem that complicated, quite frankly, and we want to make sure that the intent of our statute is carried out.

Mr. WONG. Yes, sir. You know, two—may I address that issue?

Chairman RUBIO. Yes.

Mr. WONG. Okay. So I also talk to people in Maryland. I live in Maryland.

Senator CARDIN. If I knew that ahead of time I would not have given you a hard time.

[Laughter.]

Mr. WONG. I had an Asian dad, sir. That is not hard. It is okay.

But, sir, here is what happened. When we got the Runway Extension Act, okay, we understood what the intent was with Congress. And I tried to be helpful, I tried to be proactive, and I said, you know, we took a look at it, and what happened was we got calls from people, and here is what was interesting. We got calls from small businesses that this would help. It says if we can count five years instead of three years, we can still remain small. What is surprising is that we also got calls that said, if this is active now, we have had some bad years, so if we include five years it will actually hurt us.

So between the program office and between the attorneys, we took a look at it, and we determined that the question about whether or not—which contracts would be affected, was a legitimate question. And so we decided that despite—instead of waiting we would do what we could do, as much as we could do. So we started with rulemaking to make sure that the intent of the Runway Extension Act, to affect the small business programs at our agency and every agency, was affected. The most power that we had, though, was to do it through a rule, and we have done that as quickly as possible. That one should be commencing around January of 2020.

We also understand that there is another track that Congress is taking, but at the end of the day we are both trying as quickly as we can to make sure that Congress' intent was fulfilled. We tried to do it collaboratively and cooperatively, as quickly as we could.

Senator CARDIN. Thank you.

Chairman RUBIO. Senator Ernst.

Senator ERNST. Yes. Thank you, Mr. Chair, and thank you to the witnesses for being here today.

The SBA's contracting programs role in ensuring small businesses have opportunities to compete as Federal contractors is of significant importance, and I will address some of the issues I am really concerned about. I am glad that we have an opportunity to discuss ways to improve these programs, so again, thank you for being here.

And, Mr. Wong, I will start with you. In March, Senator Tammy Duckworth and I introduced a bill called the Expanding Contracting Opportunities for Small Businesses Act, and it eliminates a discrepancy that puts women and service-disabled veterans who own small businesses at a disadvantage when competing for contracts by setting the contract manufacturing threshold at \$7 million for businesses certified under each program.

Can you speak to the impact that you think this would have and what further steps we could do to support women and veteran-owned small businesses? Any ideas that you have would be welcomed.

Mr. WONG. So I will caveat that the suggestions that I have are my own, having been a small business owner.

What I would suggest is the 8(a) program, if you look at this, this has been the backbone of our agency and it has been the favorite

contract vehicle of contracting officers for years, particularly if you look at things where we have been operating in an environment where we work with continued resolutions.

Senator ERNST. Right.

Mr. WONG. I talk to everyone as much as we can. And if you look at, sometimes, a lot of these agencies, they have 55 percent of their spending is done after April, in some of these years. That is not enough time to run competitions, okay? So that is why 8(a) is such a great vehicle. If we want to spur more small business growth into this ecosystem, my suggestion would be this, several things. First and foremost, we fix HUBZone, which we are trying to do, because I think that program could be just as powerful as 8(a). Next, what I think we should do—the suggestion would be is to increase the capacity or increase the thresholds. Because of category management and consolidation you are getting larger contracts and more complex contracts. The problem is that the thresholds have been set 20 years ago, in 1990. They have been set a while ago, and that might be more than 20.

So the problem is that, you know, the joke that I say to people is what do you have that is 30 years old today, other than your spouse, that is just as good today as it was 30 years ago? Well, we need to update the SBA limits for 2019 and beyond, particularly because we have things like category management, which is compressing things.

So right now, as an example, if you look at the way current thresholds work, we have a limit on a basic 8(a) company of \$4 million, divided by the number of option years. Four million divided by 5, people tell me, is \$800,000 a year. Right now, though, the basic contracts, for a contracting officer, that is not very much help to a contracting officer. That becomes like if they have a big pile of sand, of trying to get it off the desk with a teaspoon.

I want to turn that teaspoon into a shovel, and the way we do that, to—you know, at the end of the day, if we fix that for the contracting officer, they are the guardians of the supply of government contracts. If you can increase the capacity at which—or the thresholds at which these sole-source awards are awarded, the government contracting officer will love that. I have learned that anecdotally through conversations with them.

So finally what we do, if we can exempt category management—or small business from category management, here is another thing. If you take the added capacity, now, if you look at what is going into category management, these are all large contracts. They are over \$1 million. But if you give the capacity to the contracting officer, with up to \$4 million a year, as an example, for each of the 8(a)s, the government contracting officer has two weapons in its arsenal. They can make that award, they can allow the small business to participate because a lot of the contracting officers like those contracts. So when those contracts are removed into category management we have many disappointed parties.

So if you increase the threshold for that, the government can keep those contracts working with small businesses, and even with—we have worked with OMB, or OFPP. They have a directive on category management. They kept something in there in footnote

31 that says meeting a small business goal is justification not to use category management. So if we can do that.

And the final thing that I personally would recommend is that we give the contracting officer, and say to him or her that if you have missed one of your socioeconomic goals in the previous year, SBA will temporarily give you 8(a)-like sole-source direct authority for every socioeconomic category you have missed. And I think that what that will do is that will keep—excuse me. Last important thing, sorry. As long as you hit your 8(a) goal first.

So what I think that will do, from an ecosystem point of view, you are going to have government procurement hitting that 8(a) goal first. It is still special because it operates differently than the other programs, but it will also make it capable, and it will make it more attractive for women-owned, for HUBZones, and for service-disabled to use our products. We will bring people into the ecosystem, reward them because they have higher capacity, and it will be able to abut some of the problems that we have with category management.

If we remove small businesses from category management, at least temporarily, learn how that works efficiently with the other 77 percent. So when you take a large contract from a large company they have more. But when you take it from a small business that only has that, they quit. And even if you are one of the lucky ones that gets into category management, for a small business, you make so much money you size out, and so you do not quit but you have to leave.

Senator ERNST. Yes, no. I think it is very good and I appreciate it. I am sorry. We have gone over time. But it was really great information and I do think we need to look at these for the 8(a)s.

And just a comment that I think there is only one program that actually teaches people how to do government contracting, and so that is something that we need to focus on as well, so that we do have more women business owners, more minority business owners, more of those service-connected disabled veterans that are engaging in this area as well.

So thank you very much. I appreciate it.

Mr. WONG. Ma'am, to your point, Stanley Jones, Jr. is in the audience with us. He is responsible for that. He had a great idea that instead of delivering one-on-one capability to people we are trying to do one-to-all. The directive we are trying to do has become more relevant to the 30 million small businesses out there. So what we are trying to do is come up with modules that teach all businesses how to identify, pursue, capture, and execute business opportunities, whether it is government or not. But that is a great suggestion.

Chairman RUBIO. Senator Shaheen.

Senator SHAHEEN. Thank you, Mr. Chairman, and thank you both for being here.

Mr. Shear, do you think what Mr. Wong is proposing is a good idea?

Mr. SHEAR. When it comes to statutory changes we do not have work that provides a basis to comment on those. But let me go to looking at the issue, concerns with category management, for example. Let me start with that.

Senator SHAHEEN. Okay. Why don't you start with explaining what category management is.

Mr. SHEAR. Thank you. With category management, the idea is that you have aggregation of different types of procurements so that you are limiting the number of businesses that compete. So it tends to lead to kind of larger, you know, larger procurements, and this can have an adverse effect on small businesses.

So what I am going to—

Senator SHAHEEN. Give me an example.

Mr. SHEAR. It has been used, for example—I am trying to remember what the eagle program is called that GSA had, but it comes down to it can be as simple as providing office products per se, that you are limiting the number of firms that can compete to provide through those vehicles. So it can lead to a smaller number of small businesses that might be able to participate.

So let me start with category management, if you can take—I am sorry my definition is not more specific than that—but let me take that as an example. We now are initiating, on a large engagement, looking at category management, including impacts on small businesses, but in doing that we are going to jump back, as a starting point, what the processor was, strategic sourcing a number of years ago. And what we find, with these types of vehicles, that there are certain provisions of the Small Business Act that become even more important in ensuring that small businesses really have the opportunities they should be having.

So, for example, we have the Offices of Small and Disadvantaged Business Utilization. We have done work that shows many agencies are not in compliance with the requirements to make sure that what are called the OSDBUs really have the stature in the agency and the roles in the agency that are necessary for them to represent small business interests. And when we look back at strategic sourcing we saw a definite distinction between agencies where the OSDBUs really had a seat at the table and those where they did not.

So looking at those Small Business Act provisions through the roles of the OSDBUs, you know, the procurement center representatives at SBA, it becomes more important to try to identify how, in this environment, we can still provide contracting opportunities for small businesses. So I wanted to draw attention to that.

Just on the other thing, on women's procurement and service-disabled veteran-owned small business, SBA has talked for years about trying to bring technology into its oversight of the program and technology to try to make these programs more user-friendly for contract officers and for the firms that are participating in it. And so we certainly—our recommendations are very much geared toward the idea of bringing that type of technology, as far as a solution, to try to not only make sure ineligible firms are not participating but that these programs become more accessible for contract agencies.

Senator SHAHEEN. So is there anybody that you would cite who is doing this well, that either you or Mr. Wong would cite, any agencies within the Federal Government that you think are doing a good job?

Mr. SHEAR. The agency that stands out for me, in terms of the role of the OSDBU director, in terms of identifying, you know, opportunities for set-asides and other things, in this environment where we have, let's say, strategic sourcing, which we have looked at, and category management we have looked at, would be the Department of Homeland Security.

Senator SHAHEEN. And how about with women-owned small businesses, and what are they doing that makes them stand out? How are they doing a good job?

Mr. SHEAR. With women-owned small businesses, I think, really, the ball is in SBA's court to come up with a system that contract officers can really use, where the certification really means something that has some confidence for them, that they feel confident in using, you know, women-owned small business set-asides.

Senator SHAHEEN. So you—neither of you can recommend any agency within the Federal Government that is doing a good job with contracting out to women-owned small businesses, that is meeting their—the 5 percent target regularly, that has practices in place that you think are good at reaching out to those businesses?

Mr. WONG. I think—I think that there—sorry.

Mr. SHEAR. No. go ahead.

Mr. WONG. I think that there are several. DHS is certainly one of those.

So I had an opportunity, for example, to talk to Kevin Boshears, who is actually retiring next week. Maybe you could call him and tell him not to.

Senator SHAHEEN. Um, so—

Mr. WONG. But they do it by looking at every single procurement. They work with their procurement shop to do that. It is to their credit, however, the system that they have is very different than other agencies. And there are other agencies that do hit their women target sporadically. I could get you a list. I do not have that off the top of my head. But—

Senator SHAHEEN. Is there a list posted on the website of the SBA?

Mr. WONG. I do not think that there is a historical one, but I can get you everything that you need.

Senator SHAHEEN. Well, I am out of time, but just a follow-up. Is the issue having an individual in that position who is committed to it and who does a good job, or is the issue having a process in place that actually makes it happen?

Mr. SHEAR. You have to have an agency that is willing to give the stature to their director. So, I mean, you have two people—you know, you have a director that is involved and you have an agency, but you have certain agencies that have facilitated this more complete role. Now, you know, both of us know Kevin Boshears well. He is one that has been given that stature and he has earned that stature, so it goes hand-in-hand.

Senator SHAHEEN. Thank you, Mr. Chairman.

Chairman RUBIO. Senator Cantwell.

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this important hearing on SBA's contracting programs.

I wanted to ask about an important issue for continuing to give women access to Federal contracts. The current law provides that

women-owned businesses must have unconditional ownership by women of 51 percent interest in their company to maintain that SBA certification. I will just note that the Federal Government never met its 5 percent goal until we changed the sole-source contracting element, so when we changed that in 2015, we made our goals. We may have slipped, but I just think we have to keep peeling back the issues that are prohibiting us. And, obviously, with 50 percent of the society coming up with ideas we definitely want to make sure that they are getting access to capital to do so.

So one thing I am working with Chairman Rubio on, and I appreciate his attention to this and I am happy to work with him on this, is to make sure women-owned businesses can get equity investments that they need to grow and still be able to compete for those government contracts. This is an important aspect of their business and also important for winning contracts.

So do either of you have any concern or opposition about that language, making sure that women-owned businesses are not penalized from investment from venture capitalists at all?

Mr. WONG. Ma'am, the only challenge we might have is that generally we—the issue we have that is in the 8(a) program is a control issue, okay. But assuming that we can make sure that the ownership is there and that the control rests with women-owned companies, I have no problem with that. I mean, we are a different—you know, when these rules came out, venture capital was not—that was something that only elite companies did. Now everybody is doing it.

So I think that if we set our minds to it—and this is my personal opinion—that, you know, investment at certain ages is almost a necessary prerequisite, or at least an avenue. At the end of the day, I think that investment makes a better company. If they are a better company, they have better quality. If they have better quality, then that goes hand-in-hand, because that is how we make awards. We want stronger companies. So I like that idea.

Senator CANTWELL. Okay.

Mr. Shear.

Mr. SHEAR. We have not done work analyzing that issue to opine one way or the other.

Senator CANTWELL. Okay. Well, I thank the Chairman for his leadership on this, and I think it just—you know, when we are looking at this issue of why we do not have more success in women-owned businesses, we have to look at what are the stumbling blocks, and I would consider this one of the stumbling blocks, and we should just proceed and knock it down, and allow women to have more investment and still have these government contracts.

So thank you, Mr. Chairman.

Chairman RUBIO. Thanks for the work you have done, and the—fixed the VC investments are a key part. You cannot, in the 21st century, in any century, really, but you cannot really prosper as a business if you do not have access to investment, which is increasingly steering away from small business writ large, but in particular, among those owned by minorities and those owned by women. So I am grateful for all the work you have put in.

Senator HIRONO. You can use this time, as well, to announce our Hawaii party at five today.

Senator HIRONO. Yes. All of you are invited to Hawaii—a Taste of Hawaii on the Hill, consisting mainly of small businesses from Hawaii.

A lot of us are very supportive of the socioeconomic groups that we want to have awarded these huge—well, not the huge, but their share of government contracts. So with regard to the Department of Defense, which has a lot of contracts, the so-called Section 809—this is for Mr. Wong—809 Panel released recommendations to eliminate most small business set-asides at the Department of Defense.

So I have heard from small businesses in Hawaii, including our Native Hawaiian-owned businesses, who are seriously concerned about what these recommendations, if implemented, would mean for small businesses in the United States. And, of course, set-asides have been an important tool for Federal Government departments and agencies like DoD to meet their small business contracting goals, especially for small, disadvantages businesses, women-owned small businesses, service-disabled veteran-owned small businesses, Native Hawaiian small businesses, and others.

So, Mr. Wong, can you elaborate on the importance of small business set-asides for Federal Government departments and agencies in meeting their contracting goals?

Mr. WONG. Yes, ma'am, I can. If you want to talk—in terms of the—you were talking about the Native programs, particularly in Hawaii—

Senator HIRONO. Well, the concern has been raised by the Native Hawaiian-owned businesses because a number of them did contract with the Department of Defense and suddenly that number has plummeted.

Mr. WONG. We heard about that on Friday. Yep, I absolutely agree.

Your first point, the 809 Panel is certainly an efficient panel, but, by the same token, it is diametrically opposed to our mission.

Senator HIRONO. Yes.

Mr. WONG. We are all about, and we support the mission of maximum practicable opportunity for small business.

Senator HIRONO. Yes. I share that.

Mr. WONG. Small businesses, by their nature, are not the most efficient, but they are important, and they are important to develop—to our industrial base.

Senator HIRONO. Mm-hmm.

Mr. WONG. What I like about the Native companies, particularly the Hawaiian companies as well—

Senator HIRONO. Mm-hmm.

Mr. WONG [continuing]. Is that they are power users with 8(a). They allow, again, this shovel for a contracting officer to help them to deliver the work.

The other thing that I think that is noble about the Native companies is that they have a responsibility that is much greater than just running a small business. You know, as you know, and as we have discussed, they have to take care of past, present, and future

generations, and that is a concern that almost no other business in the United States has.

Senator HIRONO. Yes. They have, basically, like a social public good kind of a requirement for them that is not applied to any other small business.

Mr. WONG. That is correct. And so I think that when the 809 Panel, when they are talking about reducing set-asides, I absolutely would not agree with that.

Senator HIRONO. So has SBA voiced their concerns?

Mr. WONG. Absolutely. I went—

Senator HIRONO. And what has been the reaction?

Mr. WONG. So when I first got there I went over with Ken Dodds, who is also in our audience right now, and when we were there—we went over there, I think, for the third time, and I think it was Mr. Drabkin, who was the head of this, said, “Mr. Wong, you look like a nice fellow, but we are not aligned.” But he says that, so—he says, “That is okay, but our job is to make these recommendations.”

The 809 Panel, similar to category management, in my opinion, has the effect of destroying the industrial base. If you look at SBA, our history, our creation was founded on replenishing and strengthening that industrial base. That is why our mission of maximum practicable opportunity is there.

Senator HIRONO. And, by the way, you know, I sit on the Armed Services Committee, and for so many of our large contractors they need a huge, thousands of people in their supply chain. And if this recommendation by the Section 809 Panel disrupts that chain and starts to—and if it starts to result in thousands of the people who are in the chain go out of business, that is bad—

Mr. WONG. It hurts our country.

Senator HIRONO [continuing]. For our large contractors also. So what can we all do? Can this Committee weigh in? Is there something we can do to say, “Wait a minute. This is not the way to go, DoD?”

Mr. WONG. If we could work collaboratively, I would love to work collaboratively with you to help raise our voice with the 809 Panel and with Congress. But I think we should fight this.

Senator HIRONO. I hope that this is something, Mr. Chairman, that we can pursue.

So I do have some other concerns. Yeah, I hear the concerns regarding the support for women-owned businesses, because we are not hitting our goals. Can you clarify something for me? Does every Federal department have to reach these—the 20 percent contracting goals? Every department—DoD, Homeland Security, everybody?

Mr. WONG. So the technical answer is no, but the way I would like to describe it is, if you have a pie that represents 100, we have to eat 23 percent, and we have to go to each of the agencies, who, if some can eat more in certain portions then they eat more, and we negotiate that with them.

Senator HIRONO. So it would seem that we are not going to require every department to meet these goals, because some can exceed those goals. Why don't we make every department meet these goals?

Mr. WONG. Because I think that for some—depending on how you look at the buys—the short version is that every agency does not treat—does not buy from the same sources for the things that they need, so we are mindful of that.

Senator HIRONO. Do you think that kind of approach still is reasonable now, or have there not been some changes?

Mr. WONG. My personal feeling is that—and I will give you a lawyer's answer; we are both lawyers—is under the rules that we have we have exceeded that 23 percent for the sixth year in a row, but more importantly, in terms of number of dollars, which translate directly into jobs, no matter who gets those contracts, we have increased this market by about 21 percent.

So despite the misgivings that we have, we are hitting the goals that we have, but this is also why, when we are talking, you know, one of the things that is inherent to me is that when the government hits a goal and we task somebody specifically in the government to achieve it, they tend to achieve it. And the person and people who are responsible, in this case for government contracts, is the contracting officer. They have the most power to do that, because they are the ones that are delegated by their leadership—you have got to hit these goals, right?

So that is why I am generally saying make it easier for them, using SBA programs, and they will hit that goal.

Senator HIRONO. Thank you, Mr. Chairman, for letting me go over.

Chairman RUBIO. Just as a point of information, I believe Senator Duckworth has filed a Sense of the Senate to the NDAA bill—

Senator HIRONO. Oh, thank you.

Chairman RUBIO [continuing]. That would add—that would oppose the recommendation to remove the DoD set-aside. I think the Armed Services Committee has a different opinion, so we will see how that plays itself out.

Senator Romney, you would be next. You just arrived. I can—I am going to buy some time, or—I can ask a question, actually.

Senator ROMNEY. Why don't you go ahead and let me take a—

Chairman RUBIO. It is a short question.

Senator ROMNEY. Okay.

Chairman RUBIO. Just on the issue that you talked about, Mr. Wong, and that is the importance of small business to our industrial base, do you think that, when it comes to government contracting it is an enormous customer, particularly in the Department of Defense field but across the board. And this is more of a 50,000-foot-level question, but is it your sense that in addition to having laws in place that require certain behavior that there is an opening here to also have a broader national conversation about the importance of a domestic subcontractor and/or manufacturing supply chain that is capable of delivering certain steps along the process?

So obviously, in the realm of DoD, it is a little different because of the security elements that are built into these contracts, but there are plenty of industries now in which we believe that large multinationals who are headquartered in the United States dominate a field without any sort of national recognition of the fact that

many of the subcontracts and component activities underneath that big umbrella are oftentimes having to be outsourced to other countries, because we no longer have the domestic capacity to do certain things.

And this becomes concerning when you begin to realize that, in many of these fields, that are outside the realm of DoD, but whether it is telecommunications or any of these other critical industries, for our future, we are not engaged in a business-to-business competition. These have become national competitions, oftentimes in the case of China, against companies fully backed by a large and powerful government.

So it appears to me that that sort of notion needs to find itself into this conversation as well.

Mr. WONG. Yes, sir, I agree. You did mention China, and so I would just simply say that one of the phenomena that they have is they could be sitting in a room, they come up with an idea that makes sense, they can implement it in a matter of weeks. Our rules and regulations still require months, years.

So I think that if there is a way to entertain that conversation, absolutely. If you could include us in that we would be happy to work with you on that.

Chairman RUBIO. Senator Romney.

Senator ROMNEY. Thank you, Senator. I must begin by saying I am not a hostile questioner, but partially so in that I do not like the idea of set-asides generally, or requirements that people purchase, or that the government purchases from institutions that are either high cost or less efficient. It strikes me that small businesses that have the best prospects come out with better products at lower cost, and that the world would beat a path to their door. But that requiring the government to acquire products based upon other requirements other than the quality, price, and efficiency of the product being sold is a mistake.

I will put that comment aside for a moment and turn to something else which is the—with regards to the program associated with the net worth limit, particularly for those programs helping disadvantaged women. The net worth has to be less than \$750,000, as I understand it, and given the fact that the median net worth in the country is \$97,000, it strikes me that if you are an individual with a net worth of \$750,000, excluding your home, you are probably in the top 1 percent of the country. This hardly strikes me as being a program for underprivileged individuals.

Should we not reconsider what net worth is appropriate to justify investment in such a small enterprise owned by a person of that nature?

Mr. WONG. Senator, thank you for the question. If I could clarify, the \$750,000 is a ceiling. It is not a floor. And so what we do is we limit people, that if they get into business and then they get up to a certain level then we kick them out.

Senator ROMNEY. Right. Right. But kicking them out—\$750,000 is well above what I would consider a person that is disadvantaged and needs help. If the number were \$50,000 or \$100,000 I might not, in my head. But the median in the country is \$97,000. Why would a number like \$97,000 not be the better number to use, or half that? But to say that a person can have \$700,000 in personal

net worth, excluding their home, that is going to be a relatively small cohort of individuals who would have a net worth at that level.

Mr. WONG. So, anecdotally, this is my opinion. I think that—and I have dealt with many businesses over the last 30 years, and I have run 16 of them. I think that people with \$97,000 of personal net worth do not tend to hire many people. And so with somebody—you know, if somebody has \$750,000, I agree, it is a higher number than the average national net worth, but it has been something that we have been using with the 8(a) program for over 30 years. We have created a lot of jobs. We have created a lot of businesses with that program, sir, and I think that it works.

Senator ROMNEY. I would suggest that you are not creating the jobs, that people who begin those enterprises are creating the jobs, their potential to find capital from other sources. If they have got a great business idea and a net worth of \$700,000, they are going to be able to begin that business and create the jobs without the help of the government. So having Federal dollars, having average taxpayers in America provide subsidy, in effect, to individuals who have a net worth of as much as \$750,000, excluding their home, strikes me as being excessive and not really targeted to the people we are focused on helping, which are people of very modest or disadvantaged circumstances.

I guess I will stop there, Mr. Chairman, other than to say that I think with regards to each of these programs, we need to re-evaluate whether we are really helping people who could not get help from the private sector, and whether we are wise to direct the government, in its purchasing process, to favor the purchase from an enterprise that is not as competitive as the alternatives.

Chairman RUBIO. Great. Thank you very much.

Thank you both for being here. Do we have anything else? Thank you both for being here. I am going to call up the second panel. Thank you for your time and for your patience, given the vote schedule and the delay in our start.

Mr. SHEAR. Thank you very much.

Chairman RUBIO. So as we kind of accommodate the transition here in the panel, let me introduce them, give them a few seconds.

All right. I want to introduce our second panel.

Vicki Marino is the Founder and President of Kenmar General Contracting, in Key West, Florida. She started Kenmar in 2002. She became the first female licensed general contractor in Monroe County, Florida. For those of you not familiar with Monroe County, Florida, that is the world-famous Florida Keys.

Delali Dzirasa is the Founder and President—is that correct? Did I say that, Dzirasa?—Dzirasa is the Founder and President of Fearless, a digital services firm in Baltimore, Maryland, with a HUBZone certification.

And Laurie Sayles is the Founder and CEO of Civility Management Solutions in Hyattsville, Maryland. Her company provides professional consulting services and is certified as an 8(a), Women-Owned, Economically Disadvantaged, Women-Owned, and Service-Disabled Veteran-Owned small business. She spent seven years of active duty in the Marine Corps and is the first female veteran officer on the Veteran Entrepreneurial Task Force.

Thank you, all three, for being here. Ms. Marino, we will begin with you.

**TESTIMONY OF VICKI MARINO, FOUNDER AND PRESIDENT,
KENMAR GENERAL CONTRACTING, KEY WEST, FL**

Ms. MARINO. Good afternoon, Chairman Rubio, Ranking Member Cardin, and members of the Committee. My name is Vicki Marino. I own Kenmar General Contracting in Key West, Florida, and am testifying on behalf of Women Impacting Public Policy, a national, nonpartisan organization advocating on behalf of women entrepreneurs. My company is 8(a) certified, as well as EDWOSB certified. Thank you for inviting me to testify today.

In 2011, I landed my first Federal contract after success in the commercial marketplace as the first licensed woman general contractor in Monroe County, Florida. Working with SBA and a large company, through the SBA Mentor Protege Program, afforded me access to the resources necessary to build past performance and become a successful Federal contractor.

I want to take a moment to give a special shout-out to a contracting officer, Paula Claudio. Paula shepherded my company's WOSB, sole-source award through SOUTHCOM, making it one of the first to be awarded to a woman-owned construction company. I cannot tell you how important this action was to further our Federal presence and to potentially earn another exceptional past performance rating. Due to this effort, I am in the process of opening an office in Puerto Rico to help with the rebuilding effort.

Despite working as hard as I could to make my 8(a) certification productive, it took me all of nine years to hit my stride as a Federal contractor. Had it not been for WIPP's procurement expertise, receptive contracting officers, and support from the SBA, I would not have been able to get much traction. I would like to share a few recommendations and observations which I hope the Committee will find helpful.

Given the complexity of Federal contracting and the length of time it takes to build a CPARS exceptional evaluation rating, I recommended adding a transition time for 8(a) firms, as we transition to competing in a larger pool of small businesses. SBA's contracting resources should also be expanded to include support for businesses at this stage.

We encourage this Committee to look at changing socioeconomic programs to better reflect the trends in Federal buying and overcome the reluctance of agencies to use these programs. WIPP members tell us that contracting officers do not understand the WOSB/EDWOSB program, requiring the WOSB small business owners to come armed with specific instructions on how to use the program. We recommend streamlining small business programs and requiring education for contracting officers.

Further, we suggest changing sole-source rules to make them uniform. For example, while 8(a) companies can obtain sole-source contracts at \$4 million or \$6.5 million, without market research or justification, women-owned small businesses, HUBZones, and service-disabled veteran-owned small businesses require that a contracting officer must justify, through market research, that not two or more offers at a reasonable price are expected, leading to exceed-

ingly few sole-source awards. WIPP recommends Congress put all socioeconomic contracting programs on equal footing.

Certification for the WOSB/EDWOSB programs should be streamlined. In addition, all WOSBs who are willing to participate in the Federal market should be certified, even if they do not intend to utilize the set-aside program. Certifying to SBA would discourage fraudulent behavior. A critical component of certification is a site visit, so we suggest utilizing third-party certifiers.

With respect to what qualifies a woman as EDWOSB, we urge the Committee to change the definition of "net worth." Before the age of 59½, retirement accounts do not count toward net worth calculation. If the retirement account has early withdrawal penalties, it does not count toward asset total. However, retirement funds lift those penalties at age 59½. Women who are above this age must count retirement funds, often resulting in disqualification for EDWOSB status, putting older female entrepreneurs at a disadvantage.

In addition, the current definition of what constitutes a woman-owned or a minority-owned firm includes a requirement that ownership must be unconditional, leading to a lack of equity investment in these firms. Given the size of contracts, this is a barrier to growth that should be removed.

Lastly, I want to thank this Committee for passing the Runway Extension Act last year. This new law will greatly assist businesses experiencing growth in the Federal marketplace. WIPP urges the Committee to continue holding SBA accountable as they begin the rulemaking process to expedite implementation.

In conclusion, small business contracting programs are critical to the ability for small companies like mine to obtain Federal contracts, but they need revamping to meet today's buying realities. In addition, we should be taking what is working from each program and apply it to all the other programs.

I urge you to take steps that will increase Federal buying from small businesses so that the government can meet the modest goals set for women, veterans, 8(a), and HUBZone certified companies.

This concludes my testimony and I am happy to answer any of your questions. Thank you.

[The prepared statement of Ms. Marino follows:]



Testimony of

Vicki Marino

President, Kenmar General Contracting

On behalf of Women Impacting Public Policy (WIPP)

Before the Senate Committee on Small Business and

Entrepreneurship

Reauthorization of SBA's Contracting Programs

June 12, 2019

Good afternoon Chairman Rubio, Ranking Member Cardin and Members of the Committee, my name is Vicki Marino. I own Kenmar General Contracting located in Key West, Florida. I am here today to testify on behalf of Women Impacting Public Policy (WIPP), a nonpartisan organization advocating on behalf of women entrepreneurs. Thank you for inviting me to testify today on a very important segment of our economy – the federal contracting sector.

Ten years ago, I decided to become a federal contractor after showing success in the commercial marketplace as the first licensed woman general contractor in Monroe County, FL. Rather than learning federal contracting through subcontracting, I chose the path of joining a Mentor-Protégé program. It turns out this was one of the best decisions I have ever made. Working with the Small Business Administration (SBA) and a large company afforded me access to bonding, working capital and business development—resources necessary to build past performance and become a successful federal contractor. We now possess a facility clearance at the secret level and are bonded \$10M single and \$15M aggregate. We also recently secured a Women Owned Small Business (WOSB) sole source contract.

I want to take a moment to give a special shout-out to a contracting officer, Paula Claudio, who took the time to ensure that women understand the women-owned small business federal contracting program and provided clear opportunities and examples for women who contract with the Joint Interagency Task Force South (JIATFS). In my specific case, Paula shepherded my company's sole source award through the U.S. Southern Command (Southcom), making it the first to be awarded out of the 410th Contracting Support Brigade to a woman owned construction company. I cannot tell you how important this action was to further our federal presence and to provide another opportunity for an exceptional past performance rating. Due to this effort, last

week, I hired my first full time employee in San Juan, who is in the process of opening up an SBA bona fide office for my company in Puerto Rico to help with the rebuilding effort.

Despite working as hard as I could to make my 8(a) certification productive, the fact of the matter is that it took me every bit of 9 years to break into the federal market. Had it not been for the support of WIPP's knowledge of the WOSB program, receptive contracting officers and assistance from the SBA, I would not have been able to get much traction. My personal experience through the SBA's contract certification process has allowed me to understand the agency's protocols. I would like to share a few observations based on my experience, which I hope the Committee will find helpful as they reauthorize the Small Business Act and the contracting programs administered.

Given the complexity of government contracting and the length of time it takes to build a Contracting Performance Assessment Rating System (CPARS) exceptional rating, which by the way, we just received our first exceptional CPARS rating on May 14, 2019, may be useful to consider adding a transition time for 8(a) firms transitioning out of the program. As I am sure this Committee hears, 8(a) companies struggle with the transition to competing in a larger pool of small businesses, or full and open competition. SBA's contracting resources should be expanded to include support for businesses at this stage. While much is available for businesses entering the federal market, companies like mine would benefit from resources aimed at federal contractors who are experiencing growth.

The number of federal contractors working on unclassified prime contracts is at its lowest level despite a steady rise in government contract spending.¹ In FY18, the vendor count of 115,000 contractors reflected a 27% drop in a 10-year period.² These statistics show that prime contracts and task orders are growing larger, and contracting vehicles designated as “Best-in-Class” under the governmentwide category management initiative are becoming the contracting vehicle of choice. These statistics also bring attention to the need to adapt to this way of buying, which requires new strategies for small businesses and changes to SBA contracting programs to increase small businesses participation. SBA has increasingly encouraged small businesses to consider teaming, joint ventures, and mentor-protégé strategies to meet these larger requirements. While the emphasis shifts on the importance of subcontracting, we would note that data on subcontracting is not readily available—thereby hampering a small business’ ability to know which primes to approach and which agencies to target for subcontracting opportunities.

In addition to new buying strategies, we encourage this Committee to look at changing socio-economic programs, such as WOSB/EDWOSB, HUBZone, SDVOSB and 8(a) programs to better reflect the trends in federal buying and the reluctance of federal contracting officers to use these programs.

Time and time again, women-owned businesses tell us that contracting officers do not understand the WOSB/EDWOSB program, requiring women contractors to come armed with details on the program and specific instructions on how to use the program. In earlier testimony

¹ Paul Murphy, “Federal Supplier Base Continued to Shrink in Fiscal 2018,” Bloomberg Government (May 23, 2019).

² *Id.*

by GAO, they found that contracting officers issued awards under the wrong NAICS codes to WOSBs and made other contracting mistakes. It seems to me that SBA and other federal agencies could put in place an incentive program for contracting officers to use these socioeconomic programs. Even a simple recognition program would be helpful to the contracting officers that go the extra mile of using these programs in their procurements. Recognition goes a long way in securing promotions and building a successful career path.

This lack of understanding was illustrated in a recommendation offered by the Section 809 Panel, which reviewed ways to streamline DOD's acquisition policies. The Panel recommended eliminating small business programs for readily available products and services purchases under \$15 million, and instead instituting a 5% price preference for small businesses. Commissioners contended publicly that small business programs are too complex to be utilized. Rather than eliminate these programs, we recommend changes be adopted to simplify and streamline small business purchasing programs. With respect to the WOSB/EDWOSB program, we recommend that Congress require education for contracting officers. The law establishing these programs has now been in place since 2011— a full eight years. Yet, given the lack of knowledge about the program, it is still considered "new."

Additionally, we suggest changing sole source rules to make them uniform. H.R. 190, the "Expanding Contracting Opportunities for Small Businesses Act of 2019," passed by the House, is a good start. This legislation allows for WOSB sole source awards of \$4/7 million per year of a contract rather than the current one-time award of \$4 million/\$6.5 million. We support this legislation and urge the Senate to support, with one change to the bill that would provide clarification to the acquisition community. We suggest amending H.R. 190 each time it reads

“anticipated award price” to read “anticipated base year award price.” The term, “anticipated award price” always means total price for all programs to both contracting officers and agencies. Therefore, in order to make sure that it is clear that these amounts should be awarded each year, this change should be made.

However, this cannot be construed as parity. 8(a) companies can currently obtain sole source contracts at \$4/7 million without market research or justification. Small businesses owned by Native entities, such as Native Hawaiian Organizations (NHOs), Tribes, and Alaska Native Corporations (ANCs), are authorized to participate in the SBA 8(a) program under special rules. They can be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs require that a contracting officer must justify through market research that not two or more offers at a reasonable price are expected. The contracting community has interpreted this as “you are the only company in the world that performs this work,” leading to exceedingly few sole source awards. WIPP recommends Congress put all socioeconomic contracting programs on equal footing.

We understand that there are reasons for some differences in the programs, but we reject the notion that each program must be unique with its own set of complicated certifications. This only leads to impediments to awards, as seen in the HUBZone and WOSB programs, which are underutilized by federal agencies. It appears to us that certification for the WOSB/EDWOSB program should be as streamlined as possible, given that many of the elements required are also requirements for other certifications. In addition, we believe that all WOSBs who are willing to participate in the federal market should be certified even if they do not intend to use the WOSB/EDWOSB set aside program.

Certifying to SBA rather than simply reporting ownership in SAM.gov³, we believe would discourage fraudulent behavior. A critical component of certification is a site visit, and we know that SBA does not have the resources to perform site visits for every company entering the program today. We suggest that this is a role that can be filled by utilizing third party certifiers.

With respect to the definition of what qualifies a woman as economically disadvantaged (EDWOSB), we urge the Committee to change the definition of net worth. Before a woman is 59 ½, her retirement account/s do not count toward the net worth calculation. SBA regulations state that if the retirement account has early withdrawal penalties, it does not count toward the asset total. However, retirement funds lift those penalties at age 59 ½. Women who are above this age must count retirement funds—often resulting in disqualification for EDWOSB status, putting older female entrepreneurs at a disadvantage. We view this as discriminatory and a restriction that limits EDWOSB participation.

In addition, women-owned and minority-owned companies have in the definition of what constitutes a woman-owned or minority-owned firm a requirement that ownership must be “unconditional,” leading to a lack of investment in these firms. Given the size of contracts, this is a stumbling block that should be removed. Another approach, which is regulatory, is to loosen the restriction of “direct ownership” which prevents ownership by another entity. Section 3(n) of the Small Business Act does not require direct ownership of WOSBs, meaning the SBA could loosen this restriction by regulation, as was done for the HUBZone program.

The last contracting challenge we want to raise is the problem of small business growth. I would like to thank this Committee for passing the “Small Business Runway Extension Act” last

³ The System for Award Management (SAM) is an official website of the U.S. government.

year. Companies are eagerly awaiting its implementation by the SBA. Giving companies the ability to count an average of five years of revenue instead of the current three years to determine size will give them a longer time period to progress from small to midsize businesses. This new law will greatly assist businesses experiencing growth in the federal marketplace. However, many businesses are in limbo while waiting on the SBA to start its rulemaking, including federal agencies that are in the process of structuring contracting vehicles. We urge the Committee to continue pressuring and holding the SBA accountable in order to expedite this process.

When we think about business growth, diversifying into public sector contracting should be an option. Given the complexities and barriers that exist for entry into this market, we believe utilization of the women's procurement program can help women business owners become successful federal contractors. However, we would note that the government has only met its 5% goal of contracting with women once. We urge the Committee to take steps to make this program a priority, thus assisting women in business success.

This concludes my testimony. I am happy to answer any questions.

Chairman RUBIO. Thank you.
Mr. Dzirasa.

**TESTIMONY OF DELALI DZIRASA, FOUNDER AND PRESIDENT,
FEARLESS SOLUTIONS, BALTIMORE, MD**

Mr. DZIRASA. I got a text from a friend earlier and it said “be sure not to embarrass the family, friends, or the country,” so I will do my best today.

Chairman Rubio, Ranking Member Cardin, and members of the Committee, thank you for your time and opportunity to testify today. My name is Delali Dzirasa and I have a confession to make, that I do not belong here. You know, this was not supposed to be my path and my role, so how did I end up here? I had a mother that really invested in work ethic, and taught us as young boys you had to work hard and accomplish your dreams. And what she said was she believed in the power of human potential, that the power of tomorrow—that tomorrow can always be better than it is today.

And my dad had some lessons to learn also. We had a software company. We worked for him as kids, and learned two things. One, I love technology, and two, that I would never, absolutely ever work for my dad again.

So based on those lessons learned, I started a company. I founded Fearless in 2009. We are a digital services firm, and we say our mission is to build software with a soul. And we really envision a world where good software ought to power things that matter, and so all of that commercial innovation that you see, we want to have the power harvest within the Federal Government to be a benefit to the American people at large.

Growing up as a kid, I watched my father grow a small business. Today, my small business powers SBA.gov, the digital face of the Small Business Administration, where millions of Americans can grow and start their businesses and obtain funding.

I watched my mother as she cared for aging individuals. Today, CMS uses our technology to allow every Medicare beneficiary in the country to better share patient records securely and easily.

Fearless also powers Login.gov and Search.gov, the Federal Government’s search engine.

These lessons along the way taught me in the belief of potential, but I also needed an opportunity, and the SBA programs provided that opportunity for me. So I am here testifying on behalf of the HUBZone Council, a nonprofit trade organization that supports the HUBZone program, because I got that opportunity, and the Council would like to thank the Committee for their commitment to small businesses across the country.

Our relationship with the HUBZone program is a bit unique. I heard about the program early on in our history and it was about economic development communities and neighborhoods that needed it. We were passionate about it, excited about it, so much so that I moved our family from the suburbs into Baltimore. Baltimore is a tale often of two cities, right, one where there is plenty of opportunity but also where almost a quarter of the population lives below the Federal poverty line.

As I walk to work from day to day, I see individuals, whether laying on the street, and recently, a couple of weeks ago, there was

a kid that was struck by a car, one of the “Squeegee boys” they call them, washing windshields, trying to make a couple of bucks on the way to school. These are the very people the HUBZone program was meant to support, and so you can imagine how I was completely heartbroken to know that the HUBZone program has not met its goal, ever, in the history of the program. And so all of that funding, we calculated, was over \$7 billion that were ineligible for these communities that need it most were not getting there.

So we took it as a labor of love to figure out why and how we could fix the problem. So on one end you had \$7 billion. On the other hand you had lots of people unemployed, that were looking for opportunities, not handouts, to get jobs.

So that is the map at that point. We realized technology needed some updates. We realized there were two major issues—technology and policy. On the tech side, we are a software company, so what did we do? We ended up taking SBA’s data—the map was dated, reporting the wrong information. We scraped it on our own. We built our own map, and what we thought the map ought to be. That eventually got the attention of SBA, which then called us and awarded us a contract to modernize all of the HUBZone technology nationwide.

So we are here to testify to say we have helped to support and fix some of the technology, and now we are here because we need support to fix the policy.

On the policy side, we think there are lots of incremental changes that can be made within the program, but above incremental changes, we think big, bold changes are needed, and the bold changes that also were included in how these certification programs began in the first place, are needed at this time.

The HUBZone program is unique in how it provides and supports communities, and so we ask for two things. One, we have heard streamline the sole-source opportunities for HUBZone companies and all the certification programs to be on parity with the 8(a) program, and two, up the small business goal, in general, across the board. Small businesses are often called the backbone of the economy, and so it is odd that they control and create the majority of the jobs, but yet they are a fraction of the percentage of revenue that goes out.

And why is this important now? You have recently passed legislation around opportunity zones, and so investment is going into a lot of these same communities. And so if you pair it with the Jobs Creation Act through the HUBZone program, we think we can multiply the effect.

So we live in a city where the ZIP code might determine as much as a 20-year discrepancy in life expectancy, and so we need bold change now. And so if today is not the chance, the time for that bold change, the question really is when, and when is it going to be right?

Thank you for the opportunity and the time for my testimony.

[The prepared statement of Mr. Dzirasa follows:]



Testimony of

Delali Dzirasa

President and Founder, Fearless Solutions
Baltimore, MD

On Behalf of
HUBZone Contractors National Council

Before the
Senate Committee on Small Business and Entrepreneurship

“Reauthorization of SBA’s Contracting Programs”

June 12, 2019

Chairman Rubio, Ranking Member Cardin, and Members of the Committee, I would like to thank you for the opportunity to testify today. My name is Delali Dzirasa and I, like many of you, believe deeply in the power of human potential, regardless of where on the U.S. map you call home. However, I also believe that to unlock this potential, support is needed. Support may be in the form of resources, more efficient government programs, or in some cases, mere encouragement combined with opportunity and timing that creates an environment for success.

It is with that belief that I founded Fearless in 2009, a certified HUBZone and 8(a) digital services firm located in Baltimore, Maryland. Our mission is to build software with a soul and to help create a world where good software powers things that matter. At Fearless, we devote ourselves to building the same cutting edge software seen in the commercial space for our government customers. Self-driving cars are no longer a thing of the future, yet depending on what part of the country you live in, you still may not be able to pay your water bill online. Fearless exists to help bridge that gap and to make government services and technology work better for all. My company currently powers: SBA.gov, the digital face of the Small Business Administration (SBA), Search.gov, the federal government's search engine, and Login.gov, the service that will become the single entry point for residents who need to access federal resources. We are also responsible for supporting the build out of Blue Button 2.0, a Centers for Medicare and Medicaid Services (CMS) initiative that allows millions of Medicare beneficiaries across the country to easily and securely share their medical claims data. We have also been honored to support software for the Department of Defense's (DoD) Mentor Protégé program, which allows larger mentor firms to support the growth of small businesses in the DoD supply chain. This

contract is particularly meaningful to us, as a former DoD Protégé company. Fearless has had many opportunities in our capacity as a certified 8(a) and HUBZone company, which is why I am testifying today on behalf of the HUBZone Contractors National Council. The HUBZone Council is a non-profit trade association providing information and support for companies and professionals interested in the Small Business Administration's (SBA) HUBZone program. We would like to thank the Committee for their commitment to small businesses and for advancing small businesses work in the federal marketplace.

Fearless has a unique history with the HUBZone program, which dates back to 2010. In 2010, less than 1 year after founding Fearless on paper, I attended an SBA course detailing the certification programs offered by the agency. It was during this course that I first heard about the HUBZone program. The program's mission is to help provide economic development and investment in distressed communities, which nurtured my belief that human potential, with the right amount of support, can encourage unlimited success. I was sold and applied for the certification. Later that year we received our HUBZone certification and with our new found excitement, it became my mission to highlight the benefits of the program to contracting officers and other acquisition personnel across the government.

Time and time again I would hear what a great program it was, and how the mission was compelling, however, I also kept hearing about the challenges of contracting to HUBZone companies. Therefore, I began looking at all of the information and programs designed to support the HUBZone program. As I looked at the data, I realized that something about the program was not working well. The federal government has never met its goal of

awarding 3 percent of all prime dollars to HUBZone firms— hovering around 1.9-2 percent each fiscal year. This percentage equates to well over \$7-8 billion in spending that was not making it into communities most in need. This is an obvious missed opportunity for both the government and underserved communities. Each day as I walked to work, I saw people going hungry or in survival mode due to the lack of opportunity in these low income and high unemployment communities— the very ones the HUBZone program was designed to help. The need of our community overcame us, and it became a labor of love for Fearless to try to figure out how to solve this problem. We came to understand that the underutilization of the program had a lot to do with the technology that was being used, and with our tech background, we felt we were most equipped to help.

The SBA HUBZone map at that time was slow, dated, and in dire need of modernization. It was also reporting bad data. In fact, our company move from Baltimore County to Baltimore City was driven by an error in the map that showed our location was an expiring HUBZone. In actuality, two census tracts were merging, and the map was reporting data for the wrong tract. Fearless ended up scraping the SBA data on the map and building our own version. We developed this into a tool called HUBFinder, which is a compliance system that affords the opportunity for companies to grow and scale in the HUBZone program. It turned from an internal tool, to one other certified HUBZone firms wanted to use, with finally a subsequent national release. Shortly thereafter, SBA discovered and awarded us a contract to help modernize the HUBZone map and technology nationwide. However, the technology is not the only reason the HUBZone program is not being utilized.

Simply put, not enough of the contracts have been set-aside for HUBZone certified firms. Contracting officers often voice that they are unable to find enough qualified HUBZone firms to set-aside contracts. However, HUBZone companies also complain they have a hard time finding contracts. One of the reasons for this issue is the expectation that if a firm wants to compete, they should respond to market research to get the work set-aside. However, HUBZone firms have a median size of 4 employees¹ and with the thousands of RFI's and Sources Sought released each year, a firm of that size just does not have the bandwidth to adequately respond to all of those requests. This results in a stalemate where the market research is laborious for both sides, and HUBZone firms in economically distressed communities continue to lose out.

The HUBZone Program spending has been in decline for the last 10 years, and most federal agencies fall well short of meeting the 3 percent spending goal for HUBZone firms. Recently, the U.S. Small Business Administration and Congress have taken several positive steps to improve the HUBZone program and help federal agencies and prime contractors increase their HUBZone spending. The HUBZone Program is needed now more than ever, as the number of HUBZone locations around the country have roughly doubled since Congress first created the program more than 20 years ago. The HUBZone contractor community is optimistic that the Congressional actions to provide more certainty, flexibility, and fair requirements for the program will help it fulfill its promise for more federal agencies, prime contractors, and HUBZone communities across the country. The Council has identified the following changes that would increase the

¹ U.S. Gov't Accountability Off., GAO-15-234, *Opportunities Exist to Further Improve HUBZone Oversight* 56 (2014).

utilization of the HUBZone program, which in turn would greater achieve its mission of making a positive impact within underserved communities.

I. Applying the HUBZone Price Evaluation Preference to Task Orders²

The HUBZone price evaluation preference helps to level the playing field for HUBZone firms in full-and-open competitions and allows federal agencies greater opportunity to devote federal spending to HUBZone firms. Currently, the HUBZone price evaluation preference is not used as widely as it could be because of the interpretation that the HUBZone price evaluation preference does not apply to task orders. With the federal government increasingly driving its spending through IDIQ contracts, such as the “Best in Class” contracts, a significant opportunity for HUBZone spending is being lost because the HUBZone price evaluation is not being applied in the award of task orders.

The price evaluation preference language in the Small Business Act is very broad and does not exclude orders. It states that “in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror” U.S.C. § 657a(b)(3)(A). The only statutory exception for the application of the HUBZone price evaluation preference is for procurements of commodities. The fact that Congress expressly provided for one exception, but did not provide an exception for task orders, indicates Congress did not intend there to be an exception for task orders.

² EXISTING STATUTORY AND REGULATORY PROVISIONS SUPPORT APPLICATION OF THE HUBZONE PRICE EVALUATION PREFERENCE TO TASK ORDER, PilieroMazza PLLC. (Jon Williams and Tim Valley, 2019).

Moreover, the statute says that the price evaluation preference applies “in any case.” Given this very broad phrase, and the fact that there is only one explicit exception (for commodities), the HUBZone price evaluation preference should be applied as broadly as possible.

The Small Business Act states that the price evaluation preference applies when “a contract” is awarded. SBA has previously taken the position that, when the Small Business Act uses the term “contract,” this includes task orders. This is also consistent with the Supreme Court’s ruling in *Kingdomware* and FAR 2.101, which defines contract broadly and explicitly includes orders. Additionally, placement of orders under indefinite-delivery contracts falls under the statutory language “awarded on the basis of full and open competition” because the placement of the order (which is a contract) qualifies as a procurement where all responsible sources are able to submit bids, which fully satisfies the definition of full and open competition under the statute; or, in the alternative, task orders are a part of contract performance, and if the master contract was awarded under full and open competition, then this flows down to the ordering stage. Either way, the HUBZone price evaluation preference applies. Regarding orders placed under the Federal Supply Schedules, the FAR explicitly provides that “orders placed against a [Multiple Award Schedule], using the procedures in this subpart, are considered to be issued using full and open competition” 48 C.F.R. § 8.404(a).

The counter-argument to these interpretations is in FAR 19.1304, which states that “this subpart” does not apply to orders under indefinite-delivery contracts and orders under FSS contracts. Insofar as FAR 19.1304 is interpreted to create an exception from the

HUBZone price evaluation for task orders, we believe this exception is contrary to the Small Business Act, for the reasons stated above.

While we believe the law is clear, we urge Congress to make its intent clear, as procuring agencies are not following this interpretation due to a conflicting interpretation of FAR 19.1304. There would be significant benefit that application of the HUBZone price evaluation preference would have for SBA, agencies, and HUBZone firms to increase HUBZone spending and positively impact the communities these companies serve.

II. Clarifying Attempt to Maintain for the Contracting Workforce

The HUBZone program has a requirement that 35 percent of all of employees must reside in a HUBZone area. While this residency requirement is critical to the mission of the program, sometimes employees move or find different employment, thus leaving the HUBZone company out of compliance. If a company has been awarded a contract, it must “attempt to maintain” this residency requirement level. If the business falls below the 35 percent threshold, it does not automatically lose its contract, but must make a good faith effort to return to compliance. However, when a company has fallen below the 35 percent requirement, the company is not allowed to submit proposals for new contracts until it is back in compliance. This can be problematic for the acquisition workforce during market research, as it is not possible to see if a company is claiming attempt to maintain. Therefore, the Council recommends that SBA add a field to the Dynamic Small Business Search (DSBS) to clearly identify those companies claiming attempt to maintain. This change would provide clarity to the acquisition workforce that these parties are not currently eligible for an award, as well as mitigate protests.

III. Streamlining Award Eligibility for HUBZone Firms

For several years, the Council has suggested a change to the current requirement that a HUBZone company must verify eligibility at both the time of bid and award of a federal contract. Given the length of time that a federal procurement can take from bid to award, this verification requirement creates an undue and complicated compliance burden on small businesses in the HUBZone program. A change to an annual recertification would give contracting officers greater assurance that HUBZone contractors will still be eligible for award, even if the award occurs after the company was no longer eligible at the time of recertification. Furthermore, this change gives HUBZone companies a more efficient path toward compliance.

IV. Locating Contracts in Designated HUBZone Areas

The HUBZone program's mission is to provide opportunity to underserved communities by giving small businesses incentives to locate and hire in areas that otherwise might not attract their companies. In order to further fulfill the mission of the program, the Council believes that federal agencies should consider awarding HUBZone set asides for contracts that can be performed at the contractor's facility. These opportunities would give greater opportunities to these communities and the workforce that supports these companies. Additionally, limiting or discouraging the use of performance radius requirements from contracts would also encourage increased utilization of HUBZone companies. Many contracting opportunities still include language which requires the contractor's site to be

within 50 miles of the procuring agency, which acts as a deterrent for small businesses to relocate or employ individuals from these underserved communities.

While the Council believes the above changes to the HUBZone program will allow for greater opportunity, it also recognizes that there are larger issues in small business contracting that include other socioeconomic programs. As the government shifts its acquisition strategy, small business contracting needs to evolve as well.

V. Expanding Sole Source Contract Opportunities for HUBZone Companies

The Council is dedicated to fighting for government acquisition practices that maximize small business ability to compete. However, the governmentwide push to increase the use of category management leaves businesses small shut out of opportunities to contract across the government. As government buying continues to trend toward buying through large vehicles and moving away from direct contracts, the ability for small companies to win sole source awards is more crucial than ever. The Council supports eliminating option years for sole source contracts in the House-passed legislation, H.R. 190, “Expanding Contracting Opportunities for Small Businesses Act of 2019.” While this bill is a step in the right direction, it is not parity.

Increasing the award amounts for sole source contracts is extremely beneficial to the small business contracting community, however, it is equally as important to streamline and simplify rules for awarding these contracts. Our members have been told over and over again by the federal workforce that awarding a sole source to a HUBZone certified

company is too complicated. The Council believes that creating parity among SBA socioeconomic contracting programs, as it relates to sole source contracts, would incentivize agencies to increase their awards to all programs. A current hinderance to the awarding sole source contracts is the requirement that a contracting officer must show that she/he does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid. Eliminating this requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses.

VI. Changing Reporting Requirements to Accurately Reflect Contract Set-Asides

Each year, the Small Business Administration issues a procurement scorecard, which indicates how agencies performed in meeting their small business goals. The governmentwide goal of contracting with HUBZones is 3 percent. Despite this small number, the federal government has never met its goal. In FY2018, 1.7% of prime contract dollars went to HUBZone businesses.³

Despite this small number, the Council believes that even less contracts have gone to HUBZone businesses, due to inaccurate reporting. Agencies often count the same dollar

³ *Fed. Gov't Achieves Small Business Contracting Goal For Fifth Consecutive Year with Record Breaking \$105 Billion to Small Businesses*, Press Release, U.S. Small Business Admin. (May 22, 2018), available at <https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/federal-government-achieves-small-business-contracting-goal-fifth-consecutive-year-record-breaking>.

value towards multiple socioeconomic program goals, even though the contract was not explicitly a set-aside for more than one program. For example, if a contract is set-aside for the WOSB program, if the winning company is also a certified HUBZone and SDVOSB, those contract dollars count toward the agency meeting all of those goals. This practice ultimately inflates the data reported on small business contracting awards. The Council recommends agencies report progress toward small business based on how the contract was solicited, instead being able to count the same dollar value towards multiple goals. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.

VII. Adding the Small Business Administration (SBA) to the FAR Council

The Federal Acquisition Regulatory (FAR) Council was established to assist in the direction and coordination of government-wide procurement policy and government-wide procurement regulatory activities in the Federal Government. Current Council Members include the Administrator for Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space and the Administrator of General Services. While these individuals have deep knowledge of federal acquisition, a voice of the industrial base is missing. The Council supports adding the appropriate representative from the Small Business Administration.

By adding the SBA to the FAR Council, we believe that delays impacting small businesses could be further mitigated. For example, there has been a discrepancy for more than two years between the FAR and an SBA's updated limitations on subcontracting rule that use

different formulas to determine compliance. While the SBA rule allows the use of similarly situated entities on small business set-asides and 8(a) contracts, the FAR does not. This has created significant issues for both small businesses and the contracting community who have been confused on which rule to follow. Additionally, this conflict has led to legal protests on interpretations – which are timely and costly for both the government and small businesses. Adding SBA to the FAR Council could help accelerate solutions to discrepancies between the agency and interpretations of the FAR.

VIII. Ensuring Subcontracting Plan Compliance

Subcontracting is a way for small businesses to enter the federal marketplace and build past performance. With larger contracts being utilized by the federal government, subcontracting is more important than ever. It is critical that we look for ways to reward prime contractors that adhere to subcontracting plans and penalize those that do not. Presently, there is little to no recourse for prime contractors that fail to meet their small business subcontracting goals. The Council encourages the Committee to look at incentives that would spur subcontracting plan compliance.

IX. Timely Implementation of the Runway Extension Act

In December 2018, the “Small Business Runway Extension Act” was signed into law, requiring SBA to allow companies to use a five-year lookback for the purpose of size determination, instead of the current three years. This bill gives companies a little more runway and flexibility when growing out of their small size status. However, SBA has

failed to implement the law, which is causing confusion for small and midsize companies. To clarify the law for SBA, the HUBZone Council supports swift passage of H.R. 2345, the “Clarifying the Small Business Runway Extension Act of 2019.” This bill, introduced by the House, requires SBA to issue final regulations implementing the Small Business Runway Extension Act by Dec. 17, 2019 and creates a transition period allowing for small businesses to use a 3-year size standard rather than the 5-year standard –whichever keeps them small - for up to 6 months after SBA issues final regulations implementing the law. Small businesses cannot afford continued uncertainty around the implementation of this law.

X. Increasing Government Contracting Opportunities with Universities

Historically, federal contracts with universities result in a higher percentage of dollars that stay within the community. The Council recommends that Congress create exceptions for performance requirements for universities or allow them to qualify as similarly situated entities. This would encourage small business subcontracting with universities and create job placement for students, which would stimulate the economy within these communities. Additionally, it would be beneficial to allow universities to hold facility clearances and let students apply for security clearances while they are still in school.

Conclusion

The underlying principle behind the HUBZone program, established 20 years ago, remains relevant today— to decrease unemployment, and revitalize low-income

communities by encouraging businesses to locate in these HUBZone areas. Changes to SBA's contracting programs will not only benefit small businesses, but, create much needed jobs through wealth creation in distressed areas. It is crucial that SBA allocates adequate resources to implement these changes. As the government prioritizes buying through category management, the contracting programs at SBA are of critical importance for small businesses to access and succeed in the federal marketplace.

Thank you for the opportunity to testify today and I am happy to answer any questions.

Chairman RUBIO. Thank you.
Ms. Sayles.

**TESTIMONY OF LAURIE SAYLES, PRESIDENT AND CEO,
CIVILITY MANAGEMENT SOLUTIONS, GREENBELT, MD**

Ms. SAYLES. Good afternoon, Chairman Rubio, Ranking Member Cardin, and members of the Committee. My name is Laurie Sayles. I am a veteran who served 10 years in the United States Marine Corps and am now the founder and owner of Civility Management Solutions, a professional consulting firm working within both the government and commercial space, and located in Greenbelt, Maryland. I am a member of Women Impacting Public Policy and VET-Force, both organizations who have assisted in my growth.

Civility provides program, project, financial, and grants management, training, conference logistics, call center, and administrative support for several Federal agencies to include subcontracts.

I am passionate to testify because my company was able to obtain such clients due to Small Business Administration's certification program. I am certified economically disadvantaged and woman-owned small business, VA-verified service-disabled veteran-owned, and certified 8(a) headquartered in a HUBZone office. Like others, I have experienced this with SBA and the Department of Veterans Affairs to acquire certifications.

My testimony today will address these contract programs with the hope of providing recommendations to the Committee that will assist during the reauthorization process, as well as enable the SBA to increase assistance to veteran and women small business owners.

I have always been an entrepreneur. As a Marine, leadership, integrity, teamwork, and persistence became a way of life, which is essential in business. I earned the respect as an African-American woman in a man's world, and now am an outspoken advocate for veterans as I was elected as the first woman officer on the VET-Force Committee. In this role, I listen to many veteran small business owners on their frustrations to ascertain VA certifications and opportunities within the VA.

Returning to civilian life can be difficult. It is a process, it takes to adjust, and working with government agencies can become frustrating, especially understanding the many regulations and rules. While a change in the 2017 NDAA made much-needed improvements to the verification of veterans, significant issues of concern still remain. They are detailed in my written statement, but to name a few they are the requirements around military spouse participation and veterans not being located within a reasonable commute from job sites. There is a rebuttal presumption that he or she does not control the firm. However, I am very grateful for the VIP program in Maryland that trains military veterans in government contracting which Barbara Ashe spearheaded.

While I am also a woman-owned business, my fellow panelists already touched on this program, so I will use the remaining time to talk about the 8(a) business development program.

Civility obtained the 8(a) certification after being in business for four years. I utilized my local SCORE chapter for support. Do note, though, that the SBA Office of the Inspector General reported that

since 2010, there has been a consistent decline in the number of small business owners participating in the 8(a) program. There are many potential reasons for the decrease in participation, but I would like to highlight a few changes that would help.

The first is the requirement of the administrator to approve the sale of an 8(a) firm, or transfer of 8(a) contracts to another eligible 8(a) concern. This should be removed. Obtaining the administrator's approval seems burdensome and unnecessary. Unfamiliarity and—my apologies.

Recently, Civility was accepted in a pilot program referred to as the 8(a) Accelerator, that was established by the Bowie BIC University in Prince George's County, Maryland, to help train up 8(a) firms, and the SBA Washington District office collaborated in its development. The Business Opportunity Specialists can only provide procurement assistance to 8(a) firms, and Congress should explore expanding their portfolios to include all SBA certifications, and the government would see tangible results.

I lost a page and I am going to have to just move on.

Creating a pathway forward for all certified companies to thrive in their businesses is important. However, accountability and proper implementation of SBA's contracting programs is necessary, and to ensure a level playing field. The government met its 5 percent goal of contracting with women once, and has never met its HUBZone goals. I urge the Committee to think big when it comes to reauthorizing contracting programs in order to strengthen small business growth.

This concludes my testimony and I am happy to answer any questions.

[The prepared statement of Ms. Sayles follows:]

Testimony of

Laurie Sayles

President and CEO, Civility Management Solutions
(CivilityMS)
Greenbelt, MD

Before the
Senate Committee on Small Business and Entrepreneurship

“Reauthorization of SBA’s Contracting Programs”

June 12, 2019

Chairman Rubio, Ranking Member Cardin, and Members of the Committee, my name is Laurie Sayles, I am a veteran who served ten years in the United States Marine Corps and now the owner and founder of Civility Management Solutions (CivilityMS), a professional consulting service working within both the government and commercial space. My company is located in Greenbelt, MD. I am a member of Women Impacting Public Policy (WIPP) and Vet-Force, both organizations who have assisted in my growth.

CivilityMS provides project, program, financial and grants management; training; conference logistics and administrative support through contractual work for several federal agencies such as Department of Homeland Security, Department of Transportation, Department of Health and Human Services, U.S. Army, U.S. Air Force, NASA, and the Department of Veteran Affairs. Additionally, we have both prime and sub-contracts with State and Local Governments such as the Department of Education, the Department of Housing and Baltimore County. My company is able to obtain such clients through the procurement and contracting process through the Small Business Administration (SBA). I am a certified Economically Disadvantaged Women Owned Small Business (EDWOSB); and Woman Owned Small Business (WOSB) through the Small Business Administration; a VA verified Service-Disabled Veteran Owned Small Business (SDVOSB); and a certified 8(a). I, like many, have my share of experiences with SBA, as well as the Department of Veterans Affairs, to acquire the proper certifications. My testimony today will address the requirements of these contract programs with the hope of providing recommendations to the Committee that will assist during the reauthorization process to enable the SBA to obtain its desirable outcomes of increasing veterans and women small business contractors to the federal government.

Woman Owned Small Business - WOSB/EDWOSB

In 2012, the National Women's Business Council reported there were 9,878,397 women-owned businesses in the United States.¹ That's an increase of 2,086,282 businesses, or 26.8%, from 2007. Of nonfarm and privately-held businesses, 36.3% are women-owned, whereas in 2007, 28.8% were women-owned. Additionally, women-owned businesses generate more than \$1.4 trillion in receipts. Despite these great strides, women-owned businesses remain at a disadvantage in many ways, particularly within the federal procurement marketplace. In 1994, the Federal government established a five percent procurement goal for women-owned businesses. However, twenty-five years later, that goal has been achieved just once. In FY 2017, women-owned small businesses received \$20.8 billion, or 4.71 percent of all contracting dollars, missing their goal—a lost opportunity of over \$1.28 billion for women-owned small businesses.²

There are currently 70,000+ WOSBs registered to do business with the federal government, with 11,000 currently certified in the SBA WOSB/EDWOSB program. A robust certification program will ensure these companies can continue to do great work for the government, as well as create jobs in their communities.

Regrettably, I have yet to receive a contract under the WOSB procurement program. From my perspective, there are a few barriers to the program. The first is that

¹ Women-owned businesses, as defined by the U.S. Census, are businesses in which women own 51 percent or more of the equity, interest, or stock of the business. Men-owned businesses are defined as men owning 51 percent or more of the equity, interest, or stock of the business. Equally men-/women-owned businesses those in which the equity, interest, or stock of the business is shared 50-50 among men and women owners. Publicly held, foreign-owned, and non-profit businesses are not included in this data.

² U.S. Small. Bus. Admin., *Government-Wide Performance: FY 2017 Small Bus. Procurement Scorecard* (last accessed June 10, 2019), https://www.sba.gov/sites/default/files/2018-05/GovernmentWide_Scorecard_FY2017.pdf.

not all NAICS codes are eligible, and the second is that the contracting officer has to verify the certification documentation. When the SBA finalizes its WOSB certification, removal of this step will remove at least one barrier to awarding contracts through this program.

Additionally, I agree with many of my fellow WIPP members and suggest changing sole source rules to make them consistent. While the bill H.R. 190 was a great first step in its passage in the House, 8(a) companies currently obtain sole source contracts at \$4/6.5 million without market research or justification, while small businesses owned by Native entities are eligible to be awarded contracts under \$22 million without justification and above \$22 million with justification. WOSBs, HUBZones and SDVOSBs require a contracting officer to justify through market research that the contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB/EDWOSB concerns at a reasonable price. I agree with WIPP's recommendation that Congress put all socioeconomic contracting programs on equal footing. One group should not have a variance over another.

Winning sole source contracts is an issue for many women small business owners. In 2015, federal agencies were authorized to award sole source contracts to women-owned small businesses eligible for the (WOSB) Federal Contract Program. This was a huge win for women business owners, and WOSBs believed doors would be opened to millions more federal contracting dollars. However, since the authority was granted in 2015, to date the total amount of sole source awards to WOSBs/EDWOSBs is only \$278 million³.

³ Bloomberg Government. Contracts Intelligence Tool.

Furthermore, subcontracting is of great importance to small businesses. Although government data is not easily accessible, I hear from many small businesses that often subcontractors listed on a prime's subcontracting plan end up with no work, or less work than they anticipated. While we recognize that there are many reasons why prime contractors need to deviate from their subcontracting plan, I believe that more transparency and accountability would help. A suggestion to increase accountability is to designate someone in an agency to be responsible for monitoring compliance and raise questions if the prime's utilization of subcontractors is falling significantly below its subcontracting plan. Let me suggest that small business advocates in the federal agencies should be empowered to take on this role. Since prime contractors report this data bi-annually, small business contracting officers should be required to review where each prime contractor stands in regard to meeting their subcontracting goals on specified contracts. If the prime falls significantly below its stated subcontracting goals, justification from the prime and steps to meet the goal should be required.

My business experience with SBA's WOSB/EDWOSB certification was not beneficial upon establishing CivilityMS in May 2012, and I purposely waited until I was 'no longer' an employee of another company to meet the self-certification criteria. SBA's WOSB certification asked one question that I could not answer favorably when I initially established CivilityMS, which was "do you work for your company during normal business hours?" This made me pause, and I waited to self-certify in September of 2012. Therefore, I really did need to stop employment in order to get this certification, which led to no contract awards. Even though I had managed up to 128 contractors, and an estimated

\$11.5 million in contracts with six different agencies, those relationships had no value as a WOSB/EDWOSB.

VA Verified Service-Disabled Veteran-Owned Small Business

I always knew that I would become an entrepreneur. From my early beginnings in my parents' home in Chicago selling candy to the neighborhood kids, to my active duty in the Marine Corps, I developed leadership, integrity, teamwork and persistence which is essential in starting a business. I earned the respect as an African American woman in a man's world. Now, I am an outspoken advocate for veterans, as I was elected as the first Woman Veteran Officer on the Veteran Entrepreneurship Task Force (VET-Force) Committee and was nominated to become a representative on the SBA Inter-Agency Veteran Task Force. In this role, I listen to many fellow veteran small business owners and the many frustrations that they face as they strive to ascertain VOSB and SDVOSB certifications.

For many veterans, returning to civilian life can be difficult. It's a process and takes time to adjust. Adding the desire to start a business only creates another level of adjustment and perseverance. Working with many government agencies can become frustrating and difficult, especially understanding regulations and rules that are applicable to one's specific industry. For veterans, we also have an additional agency, the Department of Veterans Affairs (VA). While there are small business certifications for veterans who are seeking contracting opportunities with the government and those who are disabled-veterans seeking as well, many acquire their certification from the VA; however, they can self-certify with the SBA. An issue has been that the two agencies have different definitions and standards of control. As of October 1, 2018, the VA the

Department of Veterans Affairs (VA) amended its regulations governing the VA's Veteran-Owned Small Business (VOSB) Verification Program. The National Defense Authorization Act for Fiscal Year 2017 (NDAA), placed the responsibility for issuing regulations relating to ownership and control for the verification of VOSBs with the United States Small Business Administration (SBA). This regulation referenced SBA's regulations governing ownership and control and added terms to the verification process. The NDAA also provided that in certain circumstances a firm can qualify as VOSB or Service-Disabled Veteran-Owned Small Business (SDVOSB) when there is a surviving spouse or an employee stock ownership plan (ESOP).

I support this change because I believe the SBA should be the certifier of VOSB/SDVOSB firms since they know how to administer certifications. The VA should be tasked with what it knows how to do—determining a veteran's eligibility. Putting the SBA in charge of the certification will not be accomplished without additional resources, due to the volume of veterans who are in the program. Issues of concern to the veteran's community are the requirements around military spouse participation and the requirement that the veteran in charge of the company must be the highest paid person in the company. This has been problematic for some veterans whose businesses are young but require highly technical staff. In those cases, the owner may take a lower salary until the company experiences significant growth.

Another certification requirement that is troublesome requires service-disabled veterans to work at their company during normal business hours. The SBA, however, has not included a full-time business hours requirement, which means a veteran can have other opportunities as well as the ability to control the company's management and daily

business operations. But, if veterans are not able to work at the company during its normal business hours, there is a rebuttable presumption that veterans are not actually in control. The SBA would also prefer veterans work closer to their headquarters or job sites as the published rules mentioned that a veteran “is not located within a reasonable commute” to the company, there’s a rebuttable presumption that he or she does not control the firm.⁴

The SBA Ownership and Control of Service-Disabled Veteran Small Business Concerns 2018 rule is a first major step in clarifying the SBA’s SDVOSB ownership and control requirements. For years, we all know, the SBA’s SDVOSB regulations were ambiguous. Even the SBA’s Administrative Judges have resorted to using the 8(a) Program regulations to evaluate certain aspects of SDVOSB compliance. Whether one agrees or disagrees with a specific requirement, it is better to know that it exists, instead of being caught off guard during a protest when a contract is at stake.

My business experience with SDVOSB VA verification became beneficial because I was involved with VET-Force and therefore knew the law on the VETS First program and the Supreme Court Ruling of justifying through *Kingdomware vs. U.S. Civility*MS pursued simplified acquisitions in order to obtain prime contract awards for building past performance, and we responded to a full and open sources sought for an Exhibit Booth Logistics contract with the Department of Veteran Affairs. We were perplexed when the Contracting Officer (CO) informed us that the Program Manager preferred to work with a woman-owned midsize firm, who had been doing the work for many years. Since I was educated on the VETS First program, I informed the CO that due to the *Kingdomware*

⁴ Matthew Schoonover, *SDVOSB Eligibility Update: SBA Issues New Rule*, Shalloon, (Sept. 28, 2018), available at <http://smallgovcon.com/service-disabled-veteran-owned-small-businesses/new-sba-rule/>.

decision, our SDVOSB had to be considered. I even suggested that they do a sole-source; however, the contract was maintained as competitive. As a result, we have won that annual contract for three consecutive years since 2016. I would also like to note that the Department of Veteran Affairs realizes the shortage of women veteran's participation in VA government. A pilot program is being established to increase economic opportunities to women service-disabled veterans.

Lastly, I am grateful for the Veterans Institute of Procurement (VIP) program in Rockville, MD and specifically for its National Director, Barbara Ashe, who had the vision for this program. This is an excellent program for military veterans to come together for three days and receive training by some of the best in the business. Additionally, the camaraderie of veterans will always be relevant and CivilityMS is still connected to two potential teaming partners.

8(a) Business Development Program

I was introduced to Federal Government Contracting almost 11 years ago, and I knew the impact it would have on being an entrepreneur in terms of a legacy creation. The WOSB/EDWOSB certification was the first one I obtained easily, because it accepts self-certification. The 8(a) Business Development Program was the last certification I obtained. While I was fortunate to obtain my certification with the assistance of my local SCORE Chapter, the SBA Office of the Inspector General (OIG) reported that since 2010, there has been a consistent decline in the number of small business owners participating in the 8(a) Program. There were approximately 7,000 in 2010, and are now only 4,600 in

2015, with an even steeper decrease in January of 2016 to approximately 4,495 small business owners.

There are many potential reasons for the decrease in participation, but I would like to highlight a few changes that would help. The first is the requirement of *"the Administrator to approve the sale of an 8(a) firm or transfer of 8(a) contracts to another eligible 8(a) concern."* This should be removed. While it is understandable that the government would not want 8(a) contracts to be performed by ineligible firms, there is no public policy reason to prevent an 8(a) firm from selling itself, or novating contracts, to another eligible 8(a) concern. Obtaining the Administrator's approval seems burdensome and unnecessary. Mergers and acquisitions are a common occurrence in government contracting. Removal of this prohibition should result in increased 8(a) Program participation and contracts performed by eligible 8(a) participants. The Administrator does not need or should not be required to verify any acquiring or receiving firm as an eligible concern - that can be done by the relevant District Office.

Currently, the respective District Office makes their recommendation which is reviewed by the Associate Administrator for 8(a) Business Development, the Associate Administrator for Government Contracting & Business Development, the General Counsel, and typically the Chief of Staff and/or Deputy Administrator and then the Administrator. Consequently, this review process can take a one year or longer, which is inefficient and devalues 8(a) concerns, preventing an economically disadvantaged small business owner from competing for federal contracts. The length of time and risk of possible denial of the waiver and possible termination of 8(a) contracts places 8(a)

concerns at a competitive disadvantage compared to all other government contracting firms.

My business experience with an SBA 8(a) certification was extremely beneficial to CivilityMS, however, I waited until the federal government employees suggested I obtain an 8(a) certification. Within five months of being 8(a) certified, we won our first direct award from an oral presentation amounting to \$2 million for two years on a complex project. After approximately 4.5 years, I was able to leave my kitchen table, obtain an office space and hire corporate staff to assist with the growth of CivilityMS.

CivilityMS was fortunate to be accepted in a pilot program referred to as the "8(a) Accelerator" that was established by Bowie University, BowieBic office, in Prince George's County, Bowie, Maryland. This 6-week program offered four-hour training sessions to newly developed 8(a) firms in Maryland. The facilitators were both successful 8(a) graduates and 8(a) participants soon to graduate. The value was not only the training provided, but the ability to obtain a mentor or joint venture partner that has been vetted as a trusted business partner. The SBA Washington District Office collaborated in the development of the design and delivery of the pilot program, and two Business Opportunity Specialists (BOS) were in attendance at each session. CivilityMS had the added value of their BOS attending several of these training sessions, which allowed us to get to know each other. An 8(a) firm must market their company in order to get the largest value of the 8(a) business development program, but being able to depend upon your BOS for special needs is very important. For example, CivilityMS would like our BOS to assist us when we identify a qualifying opportunity by submitting search letters.

As I mentioned, business opportunity specialists (BOS) provide critical procurement assistance, but they are limited to working with 8(a) participants. The Congress should explore expanding their portfolios to include other socioeconomic programs. This would require additional training and additional staff, but I believe the government would see tangible results.

Given the importance of the 8(a) Program to the success of my business, I am disheartened when I hear that businesses have received their 8(a) certification but have no idea how to take advantage of it. I suggest the SBA consider a prequalification component to potential 8(a) applicants, thus ensuring that they apply only when they are ready. It is a shame to see years wasted in the program due to unfamiliarity with federal contracting.

Creating a pathway forward for veterans, women, HUBZone and 8(a) certified companies to thrive in their businesses is important. However, accountability and proper implementation of SBA's contracting programs is necessary to ensure a level playing field. The government has only met its 5% goal of contracting with women once, and has never met its 3% HUBZone goal. I urge the Committee to think big when it comes to reauthorizing contracting programs in order to strengthen small businesses poised for growth.

This concludes my testimony and I am happy to answer any questions.

Chairman RUBIO. Thank you. I am going to defer to the Ranking Member.

Senator CARDIN. Let me thank all of our witnesses. Very, very helpful. I am glad that you are here, by the way. You belong here. I had a chance to be with Fearless Solutions and the work that you do in helping SBA with the HUBZones is an important contribution, and it is great to see a small business owner doing that.

And it is good to see a graduate from the VIP program that is here. One of the things that we talk about, Mr. Chairman, is providing the technical help and assistance so that, whether it is a veteran-owned business or whether it is a women-owned business or whether it is a disadvantaged 8(a) business, that they have the technical help in order to understand how entrepreneurship can work to their advantage and they can get contracts. The VIP program, which started in Montgomery County, by the Chamber, in which Ms. Sayles is a graduate, has been now, I think, a national model, and the SBA is working with them to be able to give that type of technical assistance to veterans so that they understand how they can use the tools that are available under the SBA.

But I want to get to the issues that all three of you have raised, one way or the other, and that is how these programs are working. The rule of two, which does not apply to 8(a) but does apply to the women-owned small businesses, HUBZones, and to the veteran businesses, Ms. Marino, I think you said that is a real impediment to the programs that require the rule of two. Are you all finding that to be the case, that because of the requirements of having at least two businesses that it prevents sole-source from really working for its intended purpose?

Mr. SAYLES. I would like to speak on this, sir. When I started Civility Management Solutions I had managed 128 employees, about \$11.5 million, through seven different agencies. I had great relationships. They knew that I brought great work, that I could manage staff. However, as a woman-owned small business that had no added value for me. It took me to obtain, actually, the 8(a) program, of certified within four years, that opened up the door, because they could not get to me, even though there was the opportunity through the Woman-Owned Small Business with a sole source. But yet I did not have the past performance to compete, so that is when the opportunity actually opened, was when I got 8(a), not because I was woman-owned.

Mr. DZIRASA. I would like to echo that sentiment as well. Saying we are HUBZone, both HUBZone and 8(a), received our HUBZone certification prior to our 8(a) certification, we have had the same issue, where 8(a) just becomes the easy path, right. When there is a requirement and they need to get a requirement done very quickly, it becomes a very fast way for them to get the requirement awarded. And so even with the HUBZone, people still, in lieu of that, would do the 8(a) award and then double-count and get credit for both the 8(a) and HUBZone, but not doing the HUBZone direct.

Ms. MARINO. I was awarded a rather good-sized sole-source contract from the U.S. Army out of the 410 Contracting Command out of San Antonio, Texas, for SOUTHCOM. It was a \$1.8 million sole-source project. And the only reason that I was awarded that is because I brought information to the contracting officer, and taught

her what the FAR allowed her to do, and I was the only company that could perform, because I live in Key West and my company is in Key West, from Key West to Miami. There were no other companies that could meet this requirement. It was a mechanical contract, air conditioning.

And she had pushback from her command in San Antonio, you know, telling her that she could not award this sole source to a woman-owned small business. And she said, "Yes, I can. Here is the FAR and I am going to do it." And so she really had to educate her command on the regulations that she had the authority to do this, and they agreed, and she did award it. But had there been another woman-owned mechanical company with the same capacity and past performance that I had in my town, then she probably would not have been able to award it to me on a sole-source basis.

So, yeah, there isn't one because we are a small town, but that would hurt.

Senator CARDIN. And under the set-aside, the sole source under 8(a) does not have that same burden.

Ms. MARINO. That is correct. That is correct. She has the authority.

Senator CARDIN. So when you say you want uniformity, I take it you would like uniformity based upon the 8(a) rules on—

Ms. MARINO. Well, for all of the socioeconomic set-aside.

Senator CARDIN. Right.

Ms. MARINO. Why are they different?

Senator CARDIN. But you want us to comply to the standard 8(a) on sole source. Is that—

Ms. MARINO. Yes. That is what we are saying, and that would help with certification too. It is already there. It would streamline everything. We all agree.

Senator CARDIN. And another matter we are looking at is increasing the dollar thresholds and to remove the option years in the calculation. Do you find that to be an impediment in regards to the benefits of these programs?

Ms. MARINO. Can you—I do not understand the question.

Senator CARDIN. The thresholds that are there—

Ms. MARINO. Right.

Senator CARDIN [continuing]. Apply to each year and the option years, so, therefore, if you have a five-year potential contract the threshold is actually one-fifth of the full amount. There is interest in increasing that threshold because of the dollar amounts of these contracts. I did not know if that affected any of your businesses or not.

Mr. DZIRASA. I think so. We have seen that particular issue, where obviously 8(a)s are easier to award. And if they can stretch them out then they just have to go back and continue to renew option after option after option. And so the ability to have a larger threshold allows them to give more room and more capacity on particular contracts.

We have found, in some cases, they just say the ceiling just is not large enough. We have to put it on a different vehicle, or we have to compete it, and so that delays their process. So I do think it would greatly help with the increase of capacity and the value of contracts.

Senator CARDIN. I would think there might also be a problem with a smaller number of year contract in order to comply with the cap, whereas if the option years do not count towards the cap you do have the predictability of a longer-term commitment without being penalized, because of the dollar amount.

Thank you all very much.

Ms. MARINO. Thank you.

Chairman RUBIO. Thank you. All right. Ms. Marino, let me ask you. I understand you were the person to be awarded a sole-source contract under the Women-Owned Program.

Ms. MARINO. Well, out of the U.S. Army, from SOUTHCOM. I do not think it was the first sole-source contract ever awarded, but for that agency and that contracting command it was.

Chairman RUBIO. How were you able to win that award, and what can SBA or Federal agencies do to help more women-owned businesses win these types of awards?

Ms. MARINO. Well, I had to educate the contracting officer as to the clauses in the FAR that allowed her the authority to sole-source this to my firm, and I got that information from being a member of WIPP. They supported all the women-owned small businesses, gave us basically instructions on what to tell the contracting officer and show them their authority in the FAR. So the contracting officer was not really aware of it, so education, I think, for the contracting officers would be helpful.

There was pushback, as I mentioned before, from the command, the contracting command. Even they did not realize that there was sole-source authority for the contracting officer. So they did not realize it either.

I think it would also be helpful, not only education for the contracting officers but also reward for the contracting officers for achieving the goals, the Federal goals. There does not seem to be any way to recognize contracting officers that are doing a great job and hitting all the goals. There is just—it is sort of—it does not seem to be any system of rewarding that contracting officer for doing a good job.

Chairman RUBIO. I think it just touches on something we mentioned earlier, is that the contracting officers of the various agencies and Federal entities are not even aware—

Ms. MARINO. Right.

Chairman RUBIO [continuing]. Of the opportunity to do this, which is obviously an impediment to the program moving forward.

I think, more broadly, I guess just as a broad question, you know, why is it important to be certified—for you, for your business to have been certified in these two women-owned small business categories? I think you have already answered this somewhat in describing this opportunity, but did it increase contracting opportunities or unique resources?

Ms. MARINO. Being certified 8(a) opened up a world of opportunity for me through the Small Business Administration. Small Business Administration guaranteed my loans. The Small Business Administration helped me with guaranteeing my bonds, which is required in construction contracting. They provided training. There was so much that I got from the SBA by being an 8(a) contractor.

I think it is important that WOSB contractors are also certified by the SBA to not only get SBA support, which is just critical for growth and for success, but also it eliminates fraud. I think that the same sort of rigorous background check that the woman is really running the company, working day-to-day, signing the contracts, signing the checks, getting in the field, doing the work is critical. It is not just a front for another business. So I think certification is really critical.

Chairman RUBIO. Mr. Dzirasa, we have talked in this Committee, in previous hearings, about deficiencies in technology broadly hampering the SBA's ability to manage programs, but in particular the HUBZone program. In 2004, the GAO found that the HUBZone map, the SBA's primary way of communicating HUBZone locations to the public, was out of date. It was inaccurate. In 2013, the inspector general also found discrepancies in the historical map data, which the SBA keeps on a series of Excel spreadsheets. So think about that for a moment.

I just ask, how were you able to figure out that you were located in a HUBZone?

Mr. DZIRASA. Yeah. So interestingly enough, when we were first certified the map was reporting bad data in that particular case as well. The pin was on the wrong side of the street, and we knew it was a HUBZone. So we had to go justify—

Chairman RUBIO. The pin was on the wrong side?

Mr. DZIRASA. Yeah. So it would show that it was not, but we knew that it was—

Chairman RUBIO. The pin, like an actual pin?

Mr. DZIRASA. Yes, on the legacy map, did not show that—so the address was—there is a HUBZone kind of a square, and the building was clearly in there, but the pin when you put in the address would put it here and say you are not qualified, and it would not allow you to move forward within the process.

That has been fixed, so we actually know that well. We were one of the things that helped to fix that for SBA. But at that point it was difficult. I mean, you had to push back.

Chairman RUBIO. You had to go find whoever was in charge of the pins and—

Mr. DZIRASA [continuing]. And move the pin. That is right. Yeah. We had to get the pin moved.

Chairman RUBIO. Our work here is done then.

[Laughter.]

Mr. DZIRASA. But in that particular case, right, if you do not push back, the system would not allow you to move forward, and it would not even allow you to start the application at that time. And that has been cleaned up. It has taken, well, obviously from 2004, that you mentioned, to we were awarded a contract in 2016, and by 2017, in six months, we had the first modernization MVP out the door. And so I think some of those things are starting to trend in the right direction.

Chairman RUBIO. Yeah. And Ms. Sayles, within the four prime contracting programs at SBA there are different processes for becoming certified for participation, as we have talked about. You are in a unique experience of having—you have had experiences with three of these four programs.

Mr. SAYLES. Yes, sir.

Chairman RUBIO. I am curious to know which of the three did you find to be the easiest and which one was the hardest?

Mr. SAYLES. Actually, the Department of Veterans Affairs has improved theirs, because they are also online, but the Certify.SBA.gov site has been fabulous. And as an 8(a) firm, even going in and doing the self-certification for the woman-owned and economically woman-owned small business, they are able to pull that information that is already in the system from me being an 8(a) certified company and apply it to the process.

So some of the questions were "Are you an 8(a) firm?" Yes. And based off of that I answered less questions to get through that certification process.

So, yes, and may I add that a lot of veteran service organizations are in agreement with the VA certification going over to the SBA office, so that they are all housed within the same place, which should also add more simplification to the certification process.

Chairman RUBIO. We talked also, earlier in the hearing, about the statutory award goal of 23 percent of contracts to small businesses. The Scorecard is supposed to measure how well agencies are complying with this goal, but as you may have heard and seen and probably knew before, GAO reports found some issues with this. In your opinion, having experience with these, what does the Scorecard get right and what needs improvement?

Mr. SAYLES. Are you speaking to me, sir? My apologies. Actually, I am not as well versed. I just do know that a lot of community, as a whole, in the small business, do question whether or not the Small Business Administration Scorecard is accurate.

Chairman RUBIO. Based on their interaction with these agencies and in terms of knowing what they know about the way these agencies perform—

Mr. SAYLES. That is correct, and how the data is collected and how it is produced for us all to review it. There are a lot of entities of businesses, as well as organizations, that do question whether or not the data is correct.

Mr. DZIRASA. Yeah. I would like to echo. I also think there are questions about the double counting. So if you award a contract to a particular entity that has multiple certifications, they are allowed to count that they have received credit for all of them, and so it is not clear. If someone is woman-owned, HUBZone, and 8(a) and they do an 8(a) sole-source, they get a triple count. So I am unclear if that then bubbles up into all of those numbers, as far as them meeting the goals or not. So it is unclear how factual that data might be.

Chairman RUBIO. And you are not in, obviously, a great position to see every contract that is going out, but I know that there is skepticism among many in the small business community about whether, in fact, the numbers that are being reflected are the ones that these agencies are meeting. And as you have heard here in the testimony today, because that is a holistic number. So if some agency is doing 33, then somebody else can do less, and it often times depends on the types of contracts they are awarding.

But I know we have heard great skepticism across that, that even some of the reported numbers are not accurate, which is why

the transparency part of the Scorecard is important, so people have confidence that these are the sort of priorities that are being met and addressed.

Senator Risch, did you have questions?

Senator RISCH. No, I did not. Thank you for holding this hearing. It is an important hearing, and I know there are issues being raised. I appreciate you doing this so we can explore them. Thank you.

Chairman RUBIO. I did want to ask one more question of Ms. Marino. You are a participant in the 8(a) program. You have access to—you have talked about this a little bit, all the different components on the bonding capacity and so forth that have made you eligible for. You also have access to training, technical assistance, in addition to being able to compete for the set-aside.

Since you are active in the small business community as well, would this same type of training, in your view—on the training part of it, which you may or may not have availed yourself of heavily, but, I do not know. Maybe you did. But would that be useful to other contractors that you know from Florida or through the Women Impacting Public Policy?

Ms. MARINO. So I did participate in 7(j) training, webinar-based training that the SBA provides at no charge, and I found that that training was sort of elementary. And really what helped me move forward in my career and really gain contracts, which is the object, right, was really more one-on-one training, and, in particular, the Mentor Protegé Program was really, really helpful to me. I was in the program for two years with a large Federal contractor, and in that two-year period I learned what to do and what not to do, as a Federal contractor, and I gained from them all sorts of documentation that I needed moving forward, to be a successful Federal contractor.

And the SBA really held my mentor's feet to the fire, to make absolutely sure that they were giving me the tools that I needed and really training me and bringing me along so that I could succeed. And after two years in the program, sort of little by little I started to fly on my own with small job—\$50,000, \$100,000—that just sort of grew over time. It took a long time but that meant the protégé program was really the best education for me, as a Federal contractor.

Chairman RUBIO. And I would also imagine that these contracts have a cumulative effect, in essence, each time you complete one it sort of opens the door to other ones—

Ms. MARINO. Yes.

Chairman RUBIO [continuing]. Either by reputation on the commercial side, outside of the government contracting—

Ms. MARINO. Yes.

Chairman RUBIO [continuing]. The building capacity, or the ability to gain the confidence of those awarding these contracts that you can actually do the work.

Ms. MARINO. Exactly. If you do a good job—

Chairman RUBIO. I think that is probably true for all of you.

Ms. MARINO. Yeah. Good evaluations are everything.

Chairman RUBIO. Well, I want to thank you guys for being here and for your patience. We had votes today and we made the deci-

sion to ride it out until 3:00 p.m. Otherwise, you would have seen people running in and out all the time. But we are—is this our last hearing or do we have another reauthorization? We have two more. Lucky me.

[Laughter.]

And you do not have to come to those. You can watch. It is on like C-SPAN 14, whatever. But as we work through this reauthorization it has really also been very educational to kind of get into the structure of the agency and all of its different programs, and find what it does well, hear these stories about how these programs are making a difference, but also to identify deficiencies and look for ways to authorize them.

In a time when obviously there are a lot divisive issues in American politics, small business is one that is not, and I hope you sense from the questions here today and some of the comments that I think we have a unique opportunity to do something here that can actually pass, because it does not really have a partisan component to it, or even an ideological one. And it is something that the vast majority of Americans, certainly members of the Senate, are supportive of. Everybody has a small business in their state, more than one, obviously, and many come from small business backgrounds as well. So I am grateful for your input today because it will make a difference.

The hearing record for this will remain open for two weeks. Any statements or questions for the record should be submitted by Wednesday, June 26th, at 5:00 p.m. It is possible that some of the members that were not here or had to leave early might have a written question. If you can answer it, it would be great. It could be part of our record, and we can point back to it as we do our work. Thank you so much.

With that the hearing is adjourned.

[Whereupon, at 4:58 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

**Senate Committee on Small Business and Entrepreneurship Hearing
June 12, 2019
Questions for the Record**

Questions for SBA/GCBD

Chairman Rubio

Contracting Certification

QUESTION 1:

If the SBA were to centralize all the certification processes, what would be the anticipated additional costs and employees?

SBA RESPONSE:

SBA continues to prepare to meet its current statutory obligations to incorporate a women-owned small business (WOSB) certification. Throughout FY19, SBA analyzed opportunities to unify processes, find efficiencies through enhanced technology solutions, and decrease processing times. These efficiencies could also be leveraged if the VA certification were transferred to SBA.

These process and technological improvements will also give SBA greater transparency into its certification programs' lifecycle operational costs. SBA is working on a more comprehensive cost per each certification process, marginal cost, and marginal cost to scale at various rates and volumes for all certification programs. SBA envisions being able to provide an estimate on how much each of the various processes (initial applications, continuing eligibility, program examinations, and status protests) cost and therefore how many can reasonably be expected to be completed relative to appropriated funding levels.

SBA, VA, and OMB are working closely to understand what resources would need to be transferred from the VA to SBA to facilitate the President's Reorganization and Reform Plan. SBA and VA are discussing what resources the VA uses to manage the current program, which will help inform SBA's resource needs.

Another resource consideration will be whether the program is transferred as-is (for the award of VA contracts only), or whether Congress expands the veterans' contracting certification to be a government-wide certification for all agencies. If Congress enacts legislation making it government-wide, the VA, SBA, and OMB will analyze how this change may impact application volume and the associated resource needs.

QUESTION 2:

How many businesses are applying for certifications on an annual basis?

SBA RESPONSE:

Under the current Women-Owned Small Business Federal Contract Program, interested concerns are not required to “apply for certification” through an application process. Under current regulations, interested concerns must be registered in the System for Award Management (SAM), have a current representation posted on SAM that it qualifies as a WOSB or economically disadvantaged women-owned small business (EDWOSB), and have provided the required documents to the WOSB Program Repository, through Certify.gov. A small business that has been certified as a WOSB or EDWOSB by an SBA approved third-party certifier must provide a copy of the third-party certification to the WOSB Program Repository.

During FY 2019:

- Woman-Owned Small Business:
 - WOSB Third-Party Certifiers (TPCs) received 1,713 applications. Of those, 1,631 were for WOSB status and 82 were for EDWOSB status.
 - Until the final rule is effective, self-certification is an option for eligible WOSB and EDWOSB. The total number of WOSB and EDWOSB firms in the repository is 12,589 (as of January 2020).
 - The SBA HUBZone Program has 5,918 firms registered in Certify.gov – 1,561 applications in FY19, and;
 - The SBA 8(a) Program has 4,450 firms registered in Certify.gov – 3,782 applications in FY19.

QUESTION 3:

Do you have an estimate of a certification fee that would cover the cost of centralizing the certification process?

SBA RESPONSE:

No. SBA does not have the legal authority to collect fees related to Federal contracting certifications, although such authority could provide an alternative or supplement to the funds appropriated to operate these programs. SBA currently charges upfront and ongoing fees for other programs, such as its small business loan programs.

Women Certification

QUESTION 4:

What is your criterion for selecting NAICS codes for the WOSB and EDWOSB programs?

SBA RESPONSE:

In accordance with the Small Business Act (15 USC 637(m)), SBA designates by NAICS code those industries in which WOSBs are underrepresented or substantially underrepresented in Federal procurement. In determining the extent of underrepresentation of WOSBs, SBA may request that the head of any Federal department or agency provide SBA the data or other

information necessary to analyze such underrepresentation. The initial study performed in 2007 was entitled “The Utilization of Women-Owned SB in Federal Contracting.” The second study to assess the utilization of women-owned small businesses in government contracting was conducted in December 2015 by the Department of Commerce (entitled “The Utilization of Women-Owned SB in Federal Prime Contracting”) and SBA subsequently updated the list of eligible WOSB and EDWOSB NAICS codes to 344 eligible codes. Other more technical changes were made by SBA via a Federal notice (document citation 82 FR 47277) to the WOSB program NAICS codes in 2017 to align them with broader changes in NAICS codes. The following is the current WOSB/EDWOSB NAICS Code list:
<https://www.sba.gov/document/support-qualifying-naics-women-owned-small-business-federal-contracting-program>.

QUESTION 5:

When is the last time this list of NAICS codes has been visited?

SBA RESPONSE:

December 2015 as part of the Utilization of Women-Owned Small Businesses in Federal Prime Contracting study commissioned by the Department of Commerce.

QUESTION 6:

Is this list revisited periodically to evaluate the industries women are under-represented?

SBA RESPONSE:

SBA’s Office of Size Standards does periodic reviews for NAICS and size code changes. As directed in the Small Business Jobs Act of 2010 (Public Law 111-240), the office performs a 5-year comprehensive industry review of all NAICS codes. Additionally, in accordance with Section 29(o) of the Small Business Act (15 U.S.C. 656(o)), every 5 years SBA conducts a study of all NAICS codes to identify industries in Federal contracting in which small business concerns owned and controlled by women are underrepresented or substantially underrepresented. The next study to assess the utilization of women-owned small businesses in federal contracting is scheduled for 2020.

Veterans Certification

QUESTION 7:

What is the status of the negotiations with the Department of Veterans Affairs to move the contracting certification to the SBA?

SBA RESPONSE:

SBA, VA, and OMB continue coordinating the potential transfer of the VA’s contracting certification program to SBA, in support of the President’s Reorganization and Reform Plan. SBA will continue working with VA to further analyze resource requirements and the need for authorizing legislation that would enable VA’s small business contracting activities to be transferred to SBA.

QUESTION 8:

Do you have a plan in place to transfer this certification?

SBA RESPONSE:

SBA, VA, and OMB are determining what financial, personnel, and technological resources would need to be transferred from the VA to SBA in order to facilitate the President's Reorganization and Reform Proposal. SBA will continue working with VA to further analyze resource requirements and the need for authorizing legislation that would enable VA's small business contracting activities to be transferred to SBA.

QUESTION 9:

If the Department of Veterans Affairs approved transferring the certification today, how long would it take SBA to start servicing the SDVOSB certification?

SBA RESPONSE:

SBA will continue working with VA to further analyze resource requirements and the need for authorizing legislation that would enable VA's small business contracting activities to be transferred to SBA.

QUESTION 10:

What is the estimated cost and how many employees will you need?

SBA RESPONSE:

Please see response to question on certification cost.

Runway Extension Act:

QUESTION 11:

What is the rationale behind a one-year evaluation period among employee-based evaluations?

SBA RESPONSE:

Section (3)(a)(2)(A) of the Small Business Act provides the SBA Administrator with general discretion to specify detailed definitions or size standards for small businesses. Section (3)(a)(2)(B) provides that such definitions may utilize the number of employees, dollar volume of business, net worth, net income or other factors. However, the Act provides no guidance on the evaluation period for measuring business size for prescribing size standards by SBA.

For prescribing size standards, SBA has, historically, been using 12 months for measuring average employment for manufacturing firms and 3 years for average annual revenue for services firms and the size of other firms. The reason for using the 12-month evaluation period

for measuring average employment is both to smooth out month-to-month fluctuations in employees during the year and to reduce the record keeping burden for small businesses.

This is also consistent with section (3)(a)(2)(C) of the Small Business Act, which provides that the size of manufacturing firms be based on the average employment over the preceding 12 months when prescribing size standards by agencies without statute to issue size standards. Requiring a small business to keep five years of payroll records to support an employee-based size standard would be burdensome.

QUESTION 12:

What are the potential issues with a larger evaluation period for employee-based standards?

SBA RESPONSE:

The Small Business Runway Extension Act (Runway Extension Act) evidenced Congress's intent to expand the evaluation period for calculating the annual average gross receipts of businesses providing services from 3 years to over 5 years. On January 6, 2020, SBA implemented the Runway Extension Act by changing the period for calculation of annual average receipts for all businesses subject to receipts-based size standards.

As explained in the regulatory impact analysis of the proposed rule, the 5-year average may at times be lower than the 3-year average, thereby allowing: (i) some mid-sized businesses who have just exceeded size standards to regain their small business status; and (ii) advanced small businesses close to exceeding the size standard to retain their small business for a longer period. However, the 5-year average may at times be higher than the 3-year average, thereby causing some small businesses near the size thresholds to lose their small business status sooner. Additionally, by enabling mid-size businesses to regain small business status and lengthening the small business status of advanced and successful larger small businesses, the longer transition period may disadvantage smaller and emerging small businesses in competing for Federal opportunities.

Expanding the evaluation period for businesses subject to employee-based size standards (such as expanding the period for calculating average employment from 12 months under the current law to 24 or 36 months) will be met with similar impacts. In fact, because of technology and other efforts by businesses to become more efficient and productive in using their workforce over time, the longer evaluation period to determine a concern's number of employees could have more negative impacts on small businesses than the expansion of the evaluation period for measuring average annual revenues.

Additionally, expanding the evaluation period will also increase the record-keeping burden to small businesses.

Contracting Employee Education

QUESTION 13:

How may Procurement Center Representatives (PCRs) does the SBA currently have?

SBA RESPONSE:

As of the most recent assessment (5/31/19) there are 53 PCR's and 4 vacancies.

QUESTION 14:

Considering how many functions the PCR's are tasked with performing, should the SBA have more people in this position to advocate on behalf of small business contractors within the federal agencies?

SBA RESPONSE:

SBA participates in a joint effort with the DoD to provide training to PCR's on small business program regulatory changes and to review responsibilities.

QUESTION 15:

What other education or outreach could the SBA be doing so that contracting officers better understand how to make awards to small business contractors?

SBA RESPONSE:

The SBA Office of Government Contracting through its Area Offices conduct monthly online "1st Wednesday Training" for contracting professionals and small businesses with an average of 800-1200 participants. SBA PCR's also provide training to federal buying activities on a periodic or as needed basis.

QUESTION 16:

What education does the SBA provide to regional SBA offices?

SBA RESPONSE:

SBA PCR's support SBA District and Regional Offices with training, counseling, and assistance throughout the year and on an on-call basis. Each Regional Office is assigned an Area Wide PCR providing a single point of contact for regional and district events.

QUESTION 17:

Has the HUBZone recertification assessment been completed? If the assessment had already been completed when it was asked for in September of 2018, why have you not yet provided this to GAO?

SBA RESPONSE:

SBA submitted a closure submission to the Government Accountability Office on September 10, 2019, which addressed the open recommendation to assess the HUBZone recertification process and implement a risk-based approach to requesting and verifying firm information. As provided in this submission, the HUBZone recertification assessment was completed in accordance with the requirements of the open recommendation and the requirements of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA). As also provided in the submission to GAO, SBA is addressing shortcomings in the HUBZone risk assessment by conducting a methodologically risk assessment in accordance with GAO guidance.

QUESTION 18:

What were the key risks identified in this assessment? Have these been addressed with the new recertification process released in 2017?

SBA RESPONSE:

Management concluded that the key indicator of risk to continued compliance with HUBZone Program requirements was growth in scope of operations. The premise is that growth in revenue (including Federal contract awards) generally engenders growth in employment. In turn, growth in employment increases the likelihood that firms may fall out of compliance with the requirements that at least 35% of their employees reside in a HUBZone, and that their *principal office* be in a HUBZone.

For these reasons, management revised its recertification processes to incorporate performance of fully documented program examinations on firms that were scheduled for triennial recertification during the fiscal year and had received at least \$1,000,000 of recent Federal contract awards.

QUESTION 19:

What kind of analysis did you use to create the \$1 million threshold?

SBA RESPONSE:

During the first quarter of fiscal year 2017, HUBZone Program management analyzed the characteristics of HUBZone-certified firms at time of certification, and HUBZone-certified firms that had been awarded contracts.

- At the time of HUBZone certification, firms had median adjusted gross revenues of \$429,410; median number of employees of 5; and median number of years in operation of 8.
- HUBZone-certified firms that had been awarded contracts had median adjusted gross revenues of \$1,000,000; median number of employees of 8; and median number of years in operation of 13.
- The difference in characteristics of HUBZone-certified firms that had been awarded contracts, and characteristics of HUBZone-certified firms at time of certification is significant: median adjusted gross revenues is 133% higher; median number of employees is 60% higher; and median number of years in operation is 63% longer.

Because growth in number of employees and growth in adjusted gross revenues are positively correlated, management concluded that award of Federal contracts (which increases adjusted gross income) increases the likelihood that through growth in employment, firms would fall out of compliance with requirements that at least 35% of their employees be HUBZone residents, and that their *principal office* be located in a HUBZone. (It is recognized that if firms are performing on HUBZone contracts, firms may temporarily fall out of compliance with the requirement that at least 35% of their employees reside in a HUBZone, so long as they are

making substantive efforts to return to compliance. However, under these circumstances, they can neither bid on, nor be awarded, new HUBZone contracts.)

For these reasons, management decided to conduct fully documented program examinations on firms that were scheduled for triennial recertification during the fiscal year and had received at least \$1,000,000 of recent Federal contract awards. A fully documented program examination encompasses essentially the collection of the same information and documentation and the same analytical processes as review of an initial application.

Questions for Mr. Robb Wong

Questions from:

Ranking Member Cardin

Size standards

QUESTION 1:

As SBA works through its small business size standards review for industries and sub-industries, also known as an “exception” to the size standard, can SBA provide further information on the timing and grouping of the rulemakings for both industry and sub-industry size standards?

SBA RESPONSE:

The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to review all size standards every five years and make appropriate adjustments to reflect current market conditions. SBA completed the first 5-year review of size standards in early 2016, in which SBA adjusted upwards of about 60% of more than 1,000 size standards, enabling more than 72,000 businesses to gain or retain their small business status.

Currently, SBA is conducting the second 5-year review of size standards. As part of that effort, in April 2019, SBA issued a revised white paper on “Size Standards Methodology” and plans to roll out a series of proposed rules later this year, starting with receipts-based size standards. It normally takes 18-24 months from the preparation of the proposed rule to the publication of the final rule.

The table below presents a tentative rulemaking schedule for rolling out proposed and final rules as part of the second 5-year review of size standards under the Jobs Act.

Tentative Rulemaking Schedule – Second 5-Year Size Standards Review

Title/Rule	RIN	Proposed Rule	Final Rule	No. of Size Standards Involved
Receipts Based Size Standards in NAICS Sectors 11, 21, 22 & 23 (including receipts-based exceptions)	3245-AG89	Q2 FY 20	Q2 FY 21	104
Receipts Based Size Standards in NAICS Sectors 48-49, 51, 52 & 53 (including receipts-based exceptions)	3245-AG90	Q2 FY 20	Q2 FY 21	127
Receipts Based Size Standards in NAICS Sectors 54, 55 & 56 (including receipts-based exceptions)	3245-AG91	Q2 FY 20	Q2 FY 21	94
Receipts Based Size Standards in NAICS Sectors 61, 62, 71 72 & 81 (including receipts-based exceptions)	3245-AG88	Q2 FY 20	Q2 FY 21	145
Receipts and Employee Based Size Standards in NAICS Sectors 42 & 44-45	3245-AH10	Q3 FY 20	Q3 FY 21	140
Employee Based Size Standards in NAICS Sector 31-33 and other sectors (except Sectors 43 & 44-45) *	3245-AH09	Q3 FY 20	Q3 FY 21	436

* All employee based "exceptions" under industries for which a regular size standard is based on receipts will be reviewed as part of this grouping. These include the 150-employee-based size for the Information Technology Value Added Resellers exception to NAICS 541519 (Other computer Related Services) and the 750-employee based exception to NAICS 562910 (Remediation Services).

QUESTION 2:

How will these industries and sub-industries be grouped and when will the proposed and final rules be issued?

During the previous review and rulemaking process of the Environmental Remediation Services (ERS) Sub-Industry size standard in 2016 (under NAICS 562910), SBA included large companies in the analysis for its proposed rule, resulting in a proposed size standard of 1,250-employees announced in 2014. Then SBA removed a group of large companies from its final analysis, resulting in the final 750-employee size standard.

When SBA issued the final ERS sub-industry size standard, SBA stated that it "disagrees with [the] argument that large firms should be excluded from the analysis if ERS is not their primary activity," and further explains that a 10,000 person firm with only 2.5% of its employees engaged in ERS would have "a significant competitive edge" due to their "considerable resources and economies of scale."

However, SBA removed 49 of the largest firms from its industry data set in the final rulemaking, including five "very large firms" whose environmental revenues were less than 25% of their total revenues, 10 times the example given by SBA of a firm that should not be removed.

This shift in SBA's methodology resulted in a 67% decrease in the final size standard from SBA's original proposed 1,250-employee analysis. A justification for this change in calculation was that it would "prevent very large, diversified firms from biasing the results."

SBA RESPONSE:

The response to the previous question provides the grouping of industries and sub-industries and the timing for the issuance of proposed and final rules.

The lack of data poses a significant challenge to the evaluation of the sub-industry size standards or "exceptions," including the ERS exception. The primary source of industry data that SBA uses to review and modify industry size standards is a special tabulation of the Economic Census from the U.S. Census Bureau. However, the industry data in the Economic Census tabulation is limited to the 6-digit NAICS industry level and provides no data to evaluate a size standard at the sub-industry level. Accordingly, to evaluate the industry structure for sub-industries or "exceptions" (such as the ERS sub-industry or "exception" to NAICS code 562910), SBA uses the data from the U.S. General Services Administration's (GSA) Federal Procurement Data System – Next Generation (FPDS-NG) and from the System for Award Management (SAM). This entails a multi-step process.

First, SBA identifies the Product Service Codes (PSCs) that correspond to the specific sub-industry or "exception" within the applicable NAICS code. (FPDS-NG does not include information on use of specific "exceptions" by contracting officers.) Next, using the FPDS-NG database, SBA identifies firms that received Federal contracts in those PSCs. After that, to ensure consistency among the Census Bureau, FPDS-NG, and SAM data, SBA trims the firms for which the Federal contracting in the sub-industry activity under review does not seem to be a major source of their total enterprise revenues. Next, to prevent extreme observations from distorting the results, SBA also trims firms with questionable or unusual receipts and employment data. Lastly, SBA evaluates the revenue, employment and contract awards data of those remaining firms to derive the industry and Federal contracting factors.¹

The SBA's regulations require the contracting officer to use the appropriate NAICS code and the corresponding size standard in contract solicitations (13 CFR 121.402(b)). When using the ERS exception under NAICS 562910 the principal purpose of the procurement must be to restore or directly support the restoration of a contaminated environment. Footnote 14 to the table of size standards in 13 CFR 121.201 provides a detailed description of the ERS exception. Additionally, the contracting officer should pick the PSC that best identifies the product or service being procured.

Accordingly, based on the evaluation of the data from FPDS-NG for fiscal years 2009-2011, SBA identified three PSCs, namely F108 (Environmental Systems Protection – Environmental

¹ A more detailed explanation of the methodology for the evaluation of sub-industry or "exception" size standards is provided in "SBA's Size Standards Methodology" (pp. 41-42), available online at: <https://www.sba.gov/document/support-size-standards-methodology-white-paper>. That represents the methodology that SBA has used and will continue to use to establish or review size standards for all sub-industries or "exceptions."

Remediation), F112 (Environmental Systems Protection – Oil Spill Response) and F999 (Other Environmental Services), that most closely corresponded to ERS contract requirements as set forth in Footnote 14 to SBA's table of size standards analyzed. Since F108 and F999 accounted for about 98 percent of total contract dollars awarded under those three PSCs during that period, SBA believed that these two PSCs provided an adequate representation to evaluate the ERS size standard. These results were also confirmed by the FPDS-NG data for FY 2012-2014 which SBA analyzed in the final rule.

As part of the first 5-year review of size standards under the Jobs Act, on September 10, 2014, SBA published a proposed rule to modify a number of employee-based size standards for industries (including the ERS sub-industry) that are not part of North American Industry Classification System (NAICS) Sector 31-33 (Manufacturing), Sector 42 (Wholesale Trade), or Sector 44-45 (Retail Trade) (see 79 FR 53646).

In the proposed rule, based on the analysis of the relevant industry and Federal contracting data available at that time, SBA proposed to increase the size standard for the ERS sub-industry or "exception" from 500 employees to 1,250 employees.

Of the more than 200 comments SBA received, 32 addressed the proposed increase of the ERS size standard from 500 employees to 1,250 employees. Of those 32 comments, 23 (or 72%) opposed the proposed 1,250-employee size standard and only 9 supported it. Comments are available at www.regulations.gov. Of the 23 comments opposing the proposed 1,250-employee size standard, 3 suggested a smaller increase to 750 employees. Many of the other commenters who opposed the proposed 1,250-employee size standard felt that the existing 500-employee size standard was already sufficient to ensure small business opportunities in the ERS sub-industry and to meet Federal Government small business procurement requirements. After a thorough evaluation of these comments, as discussed in the final rule, and a further analysis of the relevant data in response to the comments, SBA adopted a size standard of 750 employees in the final rule, published on January 26, 2016 (81 FR 4435).

It is not unusual for SBA to evaluate the more recent data in the final rule than that used in the proposed rule in response to comments to the proposed rule or to refine its analysis and to adjust the proposed size standard, if necessary. It is also not unusual for SBA to adjust proposed changes in the final rule based on comments. For instance, in the same September 2014 proposed rule, SBA proposed eliminating the Information Value Added Resellers exception to NAICS 541519, Other Computer Related Services. However, in the final rule, SBA decided to retain the exception because a vast majority of commenters opposed the SBA's proposal. Similarly, in the 2012 final rule on NAICS Sector 54, Professional, Technical, and Scientific Services (77 FR 7490 (February 10, 2012)), SBA adopted a lower size standard for engineering services industries in response to comments against the SBA's higher proposed size standard. Commenters also argued that very large firms for which engineering services is not their primary industry (even though they received some engineering procurements) should be excluded from the evaluation of economic characteristics of engineering firms.

QUESTION 3:

Can SBA provide clarity on why it removed these 49 large companies, when SBA itself stated in its 2016 final rule that large firms where ERS is not their primary activity should be included in the dataset?

SBA RESPONSE:

The SBA's statement was in response to comments against the proposed 1,250-employee size standard that any firms for which the ERS is not their primary activity should be excluded from the analysis. SBA's exclusion of large companies was based on the contribution of ERS contracts to their overall enterprise revenues, not based on whether the ERS was their primary industry or not. As stated in 13 CFR 121.107, determining a business' primary industry requires the distribution of all receipts (not just contract dollars) and employees (not just among various industries in which the business operates). In response to lack of such data and public comments, SBA excluded very large firms for which the ERS contracts did not account for more than 25 percent of their overall revenues. However, for a vast majority of excluded firms, ERS contracts accounted for less than 10 percent of their revenues. If an industry or sub-industry is the primary industry, it would usually account for much more than 25 percent of total revenues.

QUESTION 4:

How exactly would the largest industry participants bias the results?

On April 11, 2019, SBA released its final "SBA's Size Standards Methodology" white paper that outlines the analytical approach SBA will use to develop the next round of employee and revenue-based size standards. In the white paper, SBA briefly described its approach to "exception" sub-industries, which was generally consistent with its past practices. However, the final white paper includes new language that seems to indicate that SBA plans to expand the practice of removing large firms from its data sets for all sub-industries, indicating that it will remove any companies "for which the data shows that federal contracting under an exception being reviewed is clearly not their primary activity relative to their overall enterprise receipts."

The white paper provides a justification for such removals, stating that "while an industry's data from the Economic Census are limited to firms that are primarily engaged in that industry, the data from SAM and FPDS-NG includes all firms regardless of whether the industry is their primary industry."

SBA RESPONSE:

As stated previously, in the absence of data for primary industry determination, in actual rulemakings, SBA looks at the share of sub-industry contract dollars in business total revenues and it may exclude very large businesses for which such share is not more than 25 percent to promote consistency in evaluating the characteristics of individual industries and sub-industries using the Economic Census and FPDS-NG data. Including such large firms in the analysis would inflate the values of industry factors (e.g., average firm size, 4-firm concentration ratio, average assets size, and the Gini-coefficient) and hence calculated size standards, thereby enabling larger and more resourceful companies to qualify as small. This may cause a significant disadvantage to smaller small businesses in need of Federal assistance the most in competing for small business set-aside contracts.

Similar to concerns from mid-size businesses (*i.e.*, firms that have just exceeded or are about to exceed the size standard) that they lack necessary resources and experience to be able to compete against large businesses in the full and open market, SBA has also received concerns from smaller small businesses that they also lack resources and experience to be able to compete against more resourceful and experienced large small businesses for Federal opportunities for small businesses. Many commenters expressed similar concerns in response to the proposed 1,250-employee size standard for the ERS exception.

QUESTION 5:

Can SBA provide its analysis that supports its conclusion that the difference between two data sets – SBA developed Economic Census versus SAM and FPDS-NG databases – justifies SBA's adjustment to remove companies where the "exception" sub-industry is not their primary activity?

SBA RESPONSE:

On average, firms in SAM and FPDS-NG are much larger in size with greater concentration of market share among the largest as compared to firms covered by the Economic Census. Of more than 7 million firms in the Economic Census, only about 500,000 are active in SAM and 125,000-150,000 receive Federal contracts during the year. SAM and FPDS-NG also suffer from the presence of outliers, *i.e.*, observations with unusually large number of employees with unusually low receipts or vice-versa. The most significant difference is that in the Economic Census a business is assigned to its primary industry only. In contrast, in SAM and FPDS-NG databases, a business can appear in multiple industries, in some cases more than 20. Thus, including in the analysis all businesses receiving Federal procurements within an industry or sub-industry without regard to whether the industry or sub-industry is a major source of their revenues can distort the results of industry analysis and hence the calculated size standards, mostly in favor of larger businesses.

QUESTION 6:

Because SAM and FPDS-NG databases include companies that have won government procurements in the sub-industry, why would the largest companies be removed from SBA's analysis?

The ERS Sub-industry exception was created in 1994 because it does not fit in an existing NAICS industry, and ERS procurements involve multiple technical disciplines and specialties across several industries. Due to consolidation of companies, large multinational engineering firms are some of the largest ERS players, but engineering is those firms' primary industry.

SBA RESPONSE:

SBA would not remove from the analysis any large companies if they are the significant players in the sub-industry even if the sub-industry is not their primary activity. Besides the shares of contract dollars in total revenues, SBA also examines the shares of total contract dollars under the sub-industry category attributed to individual businesses. If the results indicate that a firm is one of the largest players in the sub-industry in terms of the share of total contract dollars

awarded in the sub-industry category, it would not be excluded even if the sub-industry is not its primary industry.

QUESTION 7:

Should the largest competitors in the ERS industry be removed from SBA's analysis solely because engineering is their primary industry?

SBA RESPONSE:

While the size standards methodology provides a general approach to excluding large firms for which the sub-industry is clearly not a primary source of firms' total revenues, that is not the sole criterion for identifying firms to evaluate the sub-industry categories, including the ERS sub-industry. As stated elsewhere, SBA evaluates the contributions of firms' sub-industry procurement dollars in their total revenues as well as their shares in total sub-industry awards. In the 2016 final rule, SBA analysis included several large firms for which the ERS contracts accounted for 25 percent or more of their total revenues were included even though ERS was not their primary industry.

QUESTION 8:

If a major competitor, whether large or small, in the ERS industry is acquired by a multinational engineering firm, as they often are, will SBA remove it from SBA's analysis because its parent company is now an engineering firm?

In "SBA's Size Standards Methodology" released on April 11, 2019, SBA states that it will remove any companies "for which the data shows that federal contracting under an exception being reviewed is clearly not their primary activity relative to their overall enterprise receipts." However, in the rule published in the Federal Register that accompanied the white paper's release (Federal Register Vol. 84, No. 70, Page. 14591) SBA states that it "removes very large firms for which the contribution of Federal contracts under that 'exception' is quite small relative to their overall enterprise revenues."

SBA RESPONSE:

When a firm is acquired by another firm, the acquired firm becomes part of the acquiring firm and they will be treated as one company for size standards purposes. If the ERS contracts account for a substantial share (*i.e.*, 25% or more) of the parent's total revenues, it would still be included even though ERS is not its primary industry. However, the parent would be excluded if the ERS is not its substantial activity even though the ERS was a major or primary activity of the acquired firm before the acquisition.

QUESTION 9:

Can SBA please provide clarity on what threshold it will use to determine when the sub-industry activity is "clearly not their primary activity" or "quite small"?

SBA RESPONSE:

SBA determines the primary industry as the one that accounts for the largest share of firm's total revenue or employees. While companies can identify their primary NAICS code in the SAM database, there is no option for them to designate as a sub-industry category or "exception" as the primary industry. SBA has no industry-by-industry data on revenue and employees for primary industry determination. That threshold may vary by firm depending upon how many industries the firm is operating in. For example, it would be more than 50 percent for 2 industries, more than 33 percent for 3, and more than 25 percent for 4. Given the lack of firm-specific data on receipts or employees by industry or sub-industry for primary industry determination, as maintained elsewhere, SBA evaluates the share of sub-industry contract dollars in firm's total revenue. SBA generally considers "small" if that share is 25% or less.

QUESTION 10:

Will the threshold be based on a percentage, such as 25%, 2.5%, or some other value?

SBA RESPONSE:

As noted earlier, the primary industry threshold would vary from company to company depending upon the number of industries the company is operating in, with the threshold generally declining with the number of industries. For the reason explained in previous responses, SBA determines the significance of the sub-industry contracting activity in terms of firms' shares of sub-industry procurement dollars in their total revenues. Anything less than 25 percent is considered not significant.

QUESTION 11:

Will the threshold vary across sub-industries or will it be applied to all sub-industries consistently?

SBA RESPONSE:

The threshold will not exceed the 25%, but it can be lower for some sub-industries depending upon the distribution of firms by receipts, employees, and contract dollars and other factors, such as variation in characteristics of individual companies participating in each sub-industry or "exception". SBA will fully explain its analysis and rationale in the proposed rule and seek public comments on whether the threshold selected is appropriate and may adjust it, if necessary, based on industry comments.

Questions from:

Senator Hirono

Category Management

Mr. Wong, in your testimony you highlighted that last year the federal government purchased nearly \$500 billion in goods and services from private sector businesses—including around \$105 billion from small businesses. However, even as federal spending on these purchases has

increased over the last decade, the number of businesses being awarded contracts has declined by about 27 percent, and by even more for small businesses (32 percent). These declines have been attributed, in part, to the federal government's category management approach to awarding federal contracts.

QUESTION 1:

Do you have concerns about the decline in the number of businesses, particularly the number of small businesses, that are being awarded federal contracts?

SBA RESPONSE:

Yes. The decline in the number of prime small businesses who participate in the federal market and the decline in number of federal contracts awarded to small businesses is a concern to SBA, especially where such trends are at variance with the economy at large, because it erodes the Nation's industrial base. Just in the past two fiscal years, the number of Federal small business prime contractors has dropped from 120,000 to 111,000. This means that the government has 9,000 fewer small businesses working with it. The number of women-owned small businesses and small disadvantaged businesses fell last year. The history of SBA reveals that protecting the industrial base is central to our statutory mission. Growing and maintaining small businesses is essential to the strength of our nation.

A decline in prime small business contract awardees likely reduces potential competitors within the small business marketplace because fewer small firms are knowledgeable and experienced enough to compete for federal contracting opportunities. This could lead to increased pricing over time if the vendors who lose out are generally strong competitors whose continued presence in competitions can help to keep prices down. SBA has worked with OMB to incorporate several mechanisms into its category management guidance to keep competitive small businesses in the federal marketplace. First, it calls for agencies to pursue a balanced strategy that uses a mix of government-wide, agency, and more narrowly scoped (local) contracts that works best for the agency and ensures the agency can meet and exceed its small business goals with a healthy small business industrial base. Second, it encourages agencies managing government-wide solutions to use on-ramps and multiple entry points to allow new entrants onto large vehicles. Third, when agencies make decisions to migrate work to "best in class" (BIC) or government-wide vehicles, it expects contracting officers to be given clear guidance on how they may request and/or exercise exceptions from BIC and other government-wide contract solutions so that well-performing incumbent small businesses can continue to perform for agencies.

Category Management, which stresses efficiencies and BIC capability, is good in theory. However, such an approach needs to be sensibly applied to accommodate for the inherent character of small businesses. To be clear, it is very hard for small businesses to qualify as "BIC" for the many broad ranging, multiple award category management contracting vehicles (which require not simply efficiency in one area or offering per se, but efficiency across the board for all of the diverse offerings of goods and services required).

Recognizing these risks, SBA is working with OMB to ensure agencies do not leave small businesses behind and, consistent with the policies outlined above, actively consider agency-wide contracts and include a continued healthy reliance on local set-aside contracts (serving one or a small number of agency customers) that enables agencies to meet and exceed their small

business and socio-economic goals and maintain a robust industrial base. OMB's guidance reflects input encouraged by SBA and OSDDBUs acknowledging that there are a number of reasons why decentralized spend may make sense, such as when work requires specialized skills not available through small businesses on government-wide solutions, or migration could cause significant harm to the agency's industrial base. Equally important, the guidance emphasizes that BICs cannot be treated as one-size-fits all vehicles. Rather, they must be viewed as only one modest element of an effectively balanced strategy. For work that is within a managed category, local contracting offices must maintain the ability use local small businesses when they deliver superior service at competitive prices, as is often the case.

Agencies should never use category management as an excuse to ignore their small business goaling requirements and, when work is migrated to a BIC provide opportunities for contracting officers to seek exceptions for incumbents who are performing well. This will avoid situations where value added small businesses suffer and must lay off workers as their contracts are displaced by a BIC vehicle. We must remain vigilant in maintaining a robust industrial base and making sure small firms do not lose faith in the government procurement process.

SBA recognizes that OMB's existing category management guidance provides several mechanisms to help promote small business participation. In addition to the strategies described above, SBA is pleased that OMB directs agencies to ensure OSDDBUs have a seat at the table with senior accountable officials as the agency crafts its category management plan. The next step is for OMB, SBA, and category managers to work together to determine through an evaluation of market segments where small businesses may be struggling as a result of category management and figure out how to give all deserving small businesses a fair shot at winning government work.

QUESTION 2:

What kind of impact has this decline had on maintaining a robust and competitive federal marketplace for small businesses in the United States?

SBA RESPONSE:

The decline in the number of small business and socioeconomic small business government contractors is concerning because it weakens the nation's industrial base. With fewer small businesses participating in government procurement, it may be harder to mobilize and meet increased needs in times of emergency. While I am pleased to see that the government is setting record-high goals for total small business dollars spent, that alone is not enough, particularly if the number of businesses in our sector is significantly decreasing due to Category Management. We should do more to understand what is happening.

Reports like the "MAC Report" indicate that, without controlling for industries and types of items purchased, dollars obligated per small business vendor on MACs (Multiple Award Contract vehicles) exceed obligations per small business vendor on non-MACs. https://www.sba.gov/sites/default/files/resource_files/MultipleAwardContractReport_SBA_0.pdf
The average FY2017 obligations to a small business vendor without a Multiple Award Contract was only \$700,000, just 25% of the FY2017 obligations to a small business with a Multiple

Award Contract. As the percentage of MAC obligations has risen steadily (from 21% of all obligations in FY12 to 25% in FY17), the number of small businesses in the federal marketplace has declined by 16%. Small businesses now represent 74% of all businesses (down 5 percentage points in four years) performing federal contracting, even though small businesses are 99.9% of all U.S. businesses. (<https://cdn.advocacy.sba.gov/wp-content/uploads/2019/04/23142719/2019-Small-Business-Profiles-US.pdf>)

The near necessity of winning a Multiple Award Contract may be a contributing factor to the decline in the number of small business entities participating in the federal marketplace. What is clear is the importance of balancing the types of vehicles used to attract and maintain small business participation, providing consideration to the small businesses displaced by the consolidation brought about by category management, empowering agency contracting officer to make the best business decisions, and the need to remain vigilant in our bundling and consolidation analyses in creating agency, government-wide, and BIC vehicles.

QUESTION 3:

What kind of impact has this decline had on maintaining the federal government's supplier base?

SBA RESPONSE:

A decline in the small business supplier base reduces opportunities for innovation and ingenuity among government contractors. Government contractors worked on creating the microchip, GPS, and the Internet, but the pace of innovation has slowed considerably. A recent report by Bloomberg Government found that the number of federal contractors working on unclassified prime contracts is at a 10-year low despite a steady rise in government contract spending over the same period. Managed categories include many services (e.g., facility-related, construction-related, professional services, IT consulting, healthcare, logistics, industrial repair, travel agency, security, human capital, office management). Agencies must give weight to value and innovation, and not just cost-cutting, or we risk an unhealthy erosion of the small business contracting base, especially high-technology small businesses.

QUESTION 4:

What kind of impact could this decline have going forward?

SBA RESPONSE:

A weaker industrial base in the federal market could lead to less innovation, higher prices, and lower value for taxpayers. We must be vigilant in studying trends in small business participation in the federal market and comparing those trends to what is happening in the marketplace at large. Where the federal market is in a weaker state than the economy at large, we must understand the causes and if it is related to category management, work with OMB and category managers to adjust.

QUESTION 5:

In your opinion, should the Small Business Administration (SBA), which is responsible for promoting a competitive marketplace for small businesses where they receive their fair share of

federal government contracts, be doing more to preserve the federal marketplace in the United States?

Follow Up: The Small Business Act states that “it is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises.”

Furthermore, as you have noted in your testimony, the Act also charges the SBA with ensuring that, “to the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate maximum participation of small business concerns as prime contractors”.

SBA RESPONSE:

SBA is making smart changes to our programs by improving processes, policies, and advocacy. Our goals have been straightforward: to make changes that will increase the government contracting officer’s ability to use small businesses as a first option; and, to make it easier for small businesses to get our certifications and participate in greater numbers. In short – by increasing the usefulness of small businesses to government contracting officers – the supply of small business government contracts should increase, and the number of qualified small businesses government contractors should improve.

Through a dedicated and experienced staff of procurement center representatives (PCRs), SBA works tirelessly with federal agencies to ensure that small businesses receive a fair proportion of federal government contracts. SBA’s PCRs and agency small business professionals are responsible for the federal government achieving \$120 billion in small business contracting dollars for the first time in Fiscal Year 2018. SBA will continue to assist agencies in reaching their small business program goals and ensure that agencies promote small business contracting while using directed contracting strategies such as category management.

QUESTION 6:

Generally speaking, would you agree category management reduces the number of small business prime contractors working with the federal government? What does this mean for the SBA’s mission?

SBA RESPONSE:

To be clear, the challenge is not with the principle underlying category management, which is well established in the private sector. It is a commercial best practice to organize buying activities around different categories of spend so buyers of like products and services can share information, learn from category experts, and make smarter decisions. In fact, it is healthy and helpful to recognize that the federal marketplace is made up of many different submarket segments, each with their own cost drivers and best practices for attracting vendors and lowering barriers to entry.

The challenge is with how we transfer these private-sector principles to a Federal purchasing environment that must consider the significant risks for our small business industrial base. An unbalanced form of category management could easily cause the industrial base to shrink and dissuade new companies from entering the market. It is quite foreboding for a new entrant to face longer procurement timelines, a complex IDIQ award process, experience requirements, and multiple levels of compliance obligations. We must listen to these concerns carefully and adjust our practices, as necessary.

The Small Business Act warns agencies against consolidating contracts and requires a justification for most acts of consolidation. It is possible that agencies are slow to recognize consolidation, or that the consolidation that is taking place does not meet the statutory definition. The number of small businesses working with the Federal government has fallen 16% in just the past six years. Although small businesses constitute 99.9% of all U.S. businesses, they represent just 74% of federal contractors.

To ensure category management does not contradict SBA's mission to assure "maximum practicable opportunities for small business," agencies must have full ability to meet their small business contracting goals and receive credit for pursuing balanced strategies that involve a healthy reliance on local, decentralized spending through set-asides for small or medium-sized contracts. We are encouraged that OMB guidance includes this recognition as well as recognition of a number of reasons why decentralized spend may make sense, such as when work requires specialized skills not available through small businesses on government-wide solutions, migration could cause significant harm to the agency's industrial base, or a well-established incumbent contractor provides superior service at a fair price. For work that is within a managed category, local contracting offices must maintain the ability to make the best business decision.

SBA is continuing to work with OMB on these important points, and OMB's category management guidance recognizes the vital role of small businesses. In practice, however, small businesses are not served unless OSDBUs have access to the data they need and a voice at the table, as the OMB guidance envisions, to help the senior agency official responsible for category management in crafting sensible and balanced category management plans. We are pleased by the steps that GSA and others have taken to create dashboards with data that OSDBUs can use and look forward to working with our agency partners on further improvements to these important resources.

QUESTION 7:

If maximum small business engagement creates jobs, develops the economy, spurs innovation, and supports a strong, vibrant and competitive industrial base, then would you agree that it is counterproductive to limit the number of small businesses working with the federal government as prime contractors?

SBA RESPONSE:

I absolutely agree. Maximum practicable opportunity for small business is a cornerstone of the federal government's procurement strategy and our success as a nation.

QUESTION 8:

To your knowledge, have the SBA or others conducted any analysis on the impact of strategic sourcing on the industrial base?

SBA RESPONSE:

No, I am not aware that SBA or others have conducted an analysis on the impact of strategic sourcing. However, SBA has commented on and worked with OMB regarding the recently released MAC report. The MAC Report analyzed the effects of multiple-award contracts on small business participation. While the report shows that those businesses that are included on a MAC vehicle have increased their revenues, it also shows that a significant number of small businesses leave the federal procurement marketplace.

Native Businesses

Mr. Wong, I would like to thank you for recognizing that Native Hawaiian Organizations (NHOs) have a responsibility that is much greater than running a business, and that they are responsible for taking care of past, present, and future generations—unlike many other businesses. It is important to recognize the difference between entity-owned organizations, like NHOs, and individually-owned corporations, specifically within the SBA's 8(a) Program. As you know, entity-owned organizations include NHOs, Alaska Native Corporations (ANCs), and Tribally-owned organizations—all of which have responsibilities to the Native shareholders in their communities. These responsibilities are very different from those of individually-owned organizations, which were created to represent individuals, and are the primary reason Congress created this space for entity-owned organizations within the 8(a) Program.

QUESTION 9:

Can you elaborate on why there should be a separate space within the 8(a) Program for entity-owned organizations like NHOs, ANCs, and Tribally-owned organizations?

SBA RESPONSE:

The clear intent of tribal, ANC, and NHO participation in the 8(a) program is to benefit the relevant disadvantaged native community. To this end, each 8(a) Participant owned by a tribe, ANC, or NHO must annually submit to SBA information showing how the affected native community has benefitted from the tribe's/ANC's/NHO's participation in the 8(a) program through its subsidiary firm(s). We believe these reports demonstrate that participating tribes, ANCs, and NHOs are fulfilling this intent; revenues derived from 8(a) contracts have and continue to support a variety of critical programs and services for disadvantaged native communities, including cultural preservation programs, employment assistance, jobs, scholarships, internships, and subsistence activities.

QUESTION 10:

In your opinion, should the SBA be doing more to promote these organizations?

SBA RESPONSE:

The SBA advocates on behalf of all 8(a) Participants. The SBA provides training and education to federal agencies to better understand how 8(a) firms, including those that are owned by ANCs, CDCs, Indian Tribes and NHOs benefit from federal contracts. SBA works directly with contracting officers to more thoroughly explain SBA's rules and regulations and encourages agencies to use the program. As part of this dialogue with procuring agencies, SBA has explained the specific rules that apply only to entity-owned 8(a) Participants. Likewise, the SBA educates firms on how they may also qualify for other small business program certifications, such as HUBZone, to self-market and promote their capabilities to the federal agencies seeking to increase their participation in the federal marketplace. Presently, native owned firms (Hawaiians, Alaskans and Tribes) get a larger portion of revenues than other 8(a) businesses; in large part, because they provide some of the best options for the government in terms of capability, capacity, and flexibility.

HUBZone Program

Mr. Wong, the Historically Underutilized Business Zone, or "HUBZone", program has been an important program for small businesses in Hawaii—which last year for FY2018 received around \$91 million through HUBZone. As you highlighted in your testimony, the SBA has been developing regulations to simplify this program so that more small businesses can participate.

QUESTION 11:

Can you elaborate on how the SBA's regulations will simplify the program for small businesses? What changes would be particularly useful for small businesses to know?

SBA RESPONSE:

The recent (12/26/19) changes to the HUBZone Program regulations will make it easier for small businesses to understand, and comply with, initial and continuing eligibility requirements; and for acquisition agencies to award contracts to HUBZone-certified firms. There are three key changes to program requirements.

The first change is to freeze the HUBZone maps until the results of the 2020 Census have been implemented (the proposed rule freezes the HUBZone maps until December 31, 2021), and then update them every five years. The regulations will also allow HUBZone-certified companies up to three additional years to move to a new HUBZone location if the census tract or non-metropolitan county in which they are located, loses its HUBZone designation. This will allow a HUBZone-certified company to rely on having a compliant business location for a definite amount of time.

The second change is to amend the 35% HUBZone residency requirement, which requires a HUBZone-certified company to have at least 35% of its employees residing in a HUBZone. Under the

change, an employee must reside in a qualified HUBZone for 180 days and be hired by a HUBZone firm before the employee will count towards the 35% mix of HUBZone/Non-HUBZone employees. After an additional 180 days of continuous residence in a qualified HUBZone, the employee will always count as a HUBZone employee for that HUBZone firm as long as he/she remains employed by the HUBZone firm, even if the employee moves to a non-HUBZone area, or the employee's residence loses its HUBZone status. This will address an unintended consequence of the current rules, which may incentivize HUBZone-certified firms to fire employees because they move to a non-HUBZone location, or their residence loses its HUBZone status.

The third change simplifies the eligibility requirement for HUBZone contract awards. SBA proposed to change the existing requirement that a HUBZone-certified company must be compliant with the HUBZone requirements at the time of bid and at the time of award. A firm cannot know when the government will award a contract, and therefore cannot know whether it will be compliant at the time of award. To address this problem, the proposed change requires that a company only needs to be HUBZone certified/recertified once a year and will not need to prove compliance at the date of bid or at the time of award. This will allow a company to bid and win as much business as it can during a given year. More importantly, it gives contracting officers confidence that if they take the time and effort to compete a HUBZone procurement and select a HUBZone awardee, the awardee will not lose its HUBZone eligibility during the course of a lengthy procurement process and its eligibility can generally be easily determined. This should encourage agencies to use the HUBZone program more frequently.

Additionally, SBA received comments to the proposed rule that sought further revisions to SBA's definition of principal office. SBA addressed those comments in the final rule.

QUESTION 12:

In developing the regulations, what kind of outreach did the SBA conduct with small businesses who have experience with the program? What kind of outreach will there be going forward?

SBA RESPONSE:

SBA reached out to government end-users (contracting officers and acquisition professionals) as well as small businesses to help develop the changes to the HUBZone program that SBA proposed. We have met with current and prospective HUBZone small businesses and contracting agencies to better understand and address their concerns through the proposed regulations.

In addition, as part of the proposed rulemaking process, SBA held tribal consultations pursuant to Executive Order 13175, Tribal Consultations, in Anchorage, AK, Albuquerque, NM, and Oklahoma City, OK. These tribal consultations provided interested tribal representatives with an opportunity to discuss their views on various HUBZone-related issues. SBA considers tribal consultations a valuable component of its deliberations and believes these tribal consultations allowed for constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and Alaska Native Corporation (ANC) owned firms participating in the HUBZone program.

Periodically, changes in relevant statutes and/or regulations may result in changes to the HUBZone program that can affect the eligibility of HUBZone-certified firms. While the regulatory process is public, we believe that it will be helpful to provide notification of such changes to stakeholders. Accordingly, to provide notification when such changes occur, we have established certain communication procedures. Specifically, when a final regulation is issued, SBA will notify the following:

1. The portfolio of HUBZone-certified firms, via email;
2. SBA's Office of Field Operations, via routine intra-agency communications;
3. Resource partners - Procurement and Technical Assistance Centers, acquisition agencies, Offices of Small and Disadvantaged Business Utilization, etc., via email;
4. The public, through the HUBZone Program website.

The communication will explain the changes and advise where the regulations can be found online.

QUESTION 13:

In recent years the federal government has consistently fallen below expectations in meeting its contracting goals for HUBZone businesses. What kind of impact, if any, will the regulations have on the federal government's ability to meet these contracting goals going forward?

SBA RESPONSE:

We believe that the three key changes described in our response to Question 12 above will help the government to meet the 3% HUBZone goal. This will be accomplished by making it easier for companies to gain their HUBZone certification and remain compliant with the HUBZone eligibility requirements. This in turn will allow the HUBZone industrial base to grow, which will encourage procuring agencies to use the program. The changes will also make it easier for procuring to make awards under the program, likewise, making it a more attractive avenue for awarding contracts. Government-wide performance against the HUBZone goal was markedly better in FY 2018. In fact, HUBZone performance in FY 2018 was the best since FY 2009. SBA is confident that the changes in the proposed regulations will foster even better performance.

Questions from:

Senator Kennedy

According to the Government Accountability Office (GAO), the Small Business Administration (SBA) does not consistently document or follow its policies and procedures for certification reviews. As a result, SBA does not have reasonable assurance that these firms meet the eligibility criteria for the respective awards.

QUESTION 1:

In your opinion, do you feel that the Small Business Administration (SBA) could be allowing businesses to take advantage of the contracting programs who might not meet the criteria?

SBA RESPONSE:

Whenever SBA finds out that a firm has inappropriately benefitted from one of its programs, SBA has taken action to decertify or otherwise hold such firms ineligible for future contracts and, where appropriate, has initiated action to debar or suspend firms and/or principals from government contracting. SBA holds the public trust that when a small business is awarded a contract, it is eligible to receive it. We take that responsibility seriously and remain vigilant to try to prevent ineligible firms from unduly benefitting from our programs.

QUESTION 2:

I believe it is important that American tax dollars go to good use. What could the SBA do to ensure that the businesses enrolled in these contracting programs meet the criteria?

SBA RESPONSE:

SBA is constantly analyzing processes and procedures and rules to make sure that companies that receive contracts are eligible to receive them. If mistakes occur, we rectify those mistakes, minimize their adverse effects, and make changes to SBA processes and policies to make sure that the mistakes are not repeated.

Questions from:

Senator Duckworth

Mr. Wong, the 2016 NDAA established the Section 809 Panel to identify opportunities to streamline and improve the defense acquisition system. The reports produced by the Panel have been incredibly helpful in informing Congress and spurring discussion – even on controversial matters.

However, I am concerned that a few recommendations are contrary to the underlying goals of the Small Business Act. In particular, the Panel recommends that all small business set-aside requirements for readily available products and services – with or without customization – be eliminated, and then replaced with a five percent price preference.

QUESTION 1:

Mr. Wong, Senator Hirono and I filed an amendment to this year's NDAA that would simply make clear that Senate opposes those specific set-aside recommendations. Is SBA supportive of this Amendment?

SBA RESPONSE:

SBA is supportive of any effort that supports SBA's goal of ensuring a fair proportion of contracts be placed with small business. Small business set-asides are a proven success in this

effort. To SBA's knowledge, there is no data or study showing that replacing set-asides with a price preference would have comparable success.

Mr. Wong, one of my top priorities is making sure small businesses are able to compete and have real opportunities to win Federal Government contracts. The non-manufacturer rule waiver may allow the Federal Government to create a small business set-aside, even in the case when there is not a small business manufacturer that makes the all of the products needed by the Federal Government.

QUESTION 2:

Mr. Wong, given your expertise, if there are no small business manufacturers available to provide all of the products in a given contract, what is the next best alternative? Should the contracting officer set aside that contract for a small business non-manufacturer or prime vendor? Or should the contracting officer implement the Rule of Two in case there are two or more small business resellers that could fulfill the contract?

SBA RESPONSE:

The Rule of Two generally states that if there is an expectation that at least 2 small businesses can perform the work requested, then the work must be set aside for small business. If there are no small business manufactures of a particular supply item or if small business manufacturers are unavailable to supply the necessary product for a specific procurement requirement, SBA can waive the requirement that a small business nonmanufacturer must supply the product of a small business manufacturer (in the first case, it would be a class waiver; in the second, a contract specific waiver). Where that happens, a small business set-aside (or other small business contract) can be used to the benefit of small business nonmanufacturers or dealers. SBA believes that is appropriate and supports the use of small business nonmanufacturers where appropriate.

Senate Committee on Small Business and Entrepreneurship Hearing
June 12, 2019
Follow-Up Questions for the Record

Questions for Mr. William Shear

Questions from:

Senator Hirono

HUBZone Program

Mr. Shear, as you highlighted in your testimony, the SBA has not fully implemented the Government Accountability Office's (GAO) recommendations to address certification issues within the Women-Owned Small Business (WOSB) and Historically Underutilized Business Zone (HUBZone) Programs.

With respect to the WOSB Program you found that the SBA lacked clear procedures to review the performance of third-party certifiers, on which women-owned small businesses rely to receive awards through the program, and that plans to issue new procedures had been delayed.

QUESTION 1:

Can you elaborate on why it is so important for the SBA to have clear procedures for reviewing the performance of third-party certifiers for women-owned small businesses?

Clear procedures for reviewing the performance of third party certifiers for women-owned small businesses are an important internal control to support oversight of certifiers, upon whom SBA relies to help ensure that eligible businesses participate in the women owned small business program. While SBA has developed some procedures for reviewing the performance of third party certifiers, it has not demonstrated a commitment to implementing the procedures. SBA does not have plans to conduct further compliance reviews of the certifiers. SBA officials said that third-party certifier oversight procedures would be updated, if necessary, after certification options have been clarified in the final WOSB certification rule. Ongoing oversight activities, such as regular compliance reviews of third party certifiers, could help SBA to better ensure the certifiers fulfill the requirements of their agreements with SBA, and better understand the steps certifiers have taken in response to previous compliance review findings and whether those steps have been effective. Without procedures to regularly monitor and oversee third-party certifiers, SBA cannot provide reasonable assurance that certifiers are complying with program requirements and cannot improve its efforts to identify ineligible firms or potential fraud.

QUESTION 2:

What kind of impact could these delays have on women-owned small businesses—particularly since the SBA lacks a program for certifying women-owned small businesses?

By not undertaking actions to improve oversight of the certification process, the WOSB program is exposed to increased risk of fraud. In addition, based on our work on the WOSB Program, as well as our body of work on small business contracting programs, it appears that contract officers appear more willing to use the programs that are considered to have more complete certification processes.

QUESTION 3:

What other steps could the SBA take to address this issues for women-owned small businesses?

We have also reported that SBA has not documented specific activities designed to oversee third-party certifiers on an ongoing basis, including reviews of monthly reports submitted by third-party certifiers. SBA does not review the reports to identify any trends in certification deficiencies that could inform program oversight. A third-party certifier told us it has regularly reported firms it suspected of submitting potentially fraudulent applications in its monthly reports and that SBA has not followed up with them. In addition, two third-party certifiers said that if SBA is not cross-checking the list of firms included in their monthly reports, a firm deemed ineligible by one certifier may submit an application to another certifier and obtain approval. We maintain that our previous recommendation should be addressed—that is, that the Administrator of SBA should establish and implement comprehensive procedures to monitor and assess the performance of certifiers in accordance with the requirements of the third party certifier agreement and program regulations. Such procedures can include reviewing monthly reports submitted by third party certifiers.

In addition, SBA does not collect reliable information on the results of its annual eligibility examinations. SBA also continues to have no mechanism to look across examinations for common eligibility issues to inform the WOSB program. As we noted in 2014, by not analyzing examination results broadly, the agency is missing opportunities to obtain meaningful insights into the program, such as the reasons many businesses are deemed ineligible. Further, SBA still conducts eligibility examinations only of firms that have already received a WOSB award. This sampling practice restricts SBA's ability to identify potentially ineligible businesses prior to a contract award. Restricting the samples in this way limits SBA's ability to better understand the eligibility of businesses before and prevent potential fraud. Without maintaining reliable information on the results of eligibility examinations, developing procedures for analyzing results, and expanding the sample of businesses to be examined to include those that did not receive contracts, SBA limits the value of its eligibility examinations and its ability to reduce ineligibility among businesses registered to participate in the WOSB program. These deficiencies also limit SBA's ability to identify potential fraud risks and develop any additional control activities needed to address these risks. As a result, the program may continue to be exposed to the risk of ineligible businesses receiving set-aside contracts. In addition, in light of these continued deficiencies, the implementation of sole-source authority without addressing the other changes made by the 2015 NDAA could increase program risk. For these reasons, we maintain

that our previous recommendation that SBA enhance its WOSB eligibility examination procedures should be addressed.

Question from:

Senator Kennedy

I have legislation called the Contracting and Tax Accountability Act of 2019. This legislation would require contractors to certify they do not have seriously delinquent tax debt during an agency's grant/contract solicitation process, and it would authorize the secretary of Treasury to disclose information on seriously delinquent tax debt.

QUESTION 1:

As an employee of the Government Accountability Office, do you think this legislation would create a path forward to ensuring that contracts do not go to high-risk individuals?

See the GAO report, *Federal Contracting: Opportunities to Improve Compliance with Regulations and Enhance Tax Collections* (GAO-19-243).

Governmentwide, we found that of the 120,000 federal contractors that were awarded contracts in 2015 and 2016, over 4,600 of them had unpaid taxes at the time they received the award. These contractors collectively owed \$1.8 billion in unpaid taxes as of December 15, 2016, and received contract award obligations totaling \$17 billion. In our review of these contracts at five selected agencies, we found that controls for considering tax debts before awarding the contract were potentially ineffective in ensuring compliance with relevant laws and regulations. The report contained 12 recommendations, including that the selected agencies enhance controls for considering contractors' qualifying federal tax debt before awarding contracts and that the IRS evaluate options to obtain comprehensive contract-payment information to better enable it to recoup taxes owed. For contracts above the simplified acquisition threshold, the Contracting and Tax Accountability Act of 2019 (S.1385) would, among other things, generally require the prospective contractor to provide written certification that it has no seriously delinquent tax debts and authorize the Secretary of the Treasury to disclose limited information to the agency to support that determination. Although we have not evaluated potential impacts if S.1385 were passed into law, it offers the potential to support the integrity of the contracting process by improving the control environment for considering prospective contractors' federal tax debt.

Question from:

Senator Duckworth

Mr. Shear, your testimony and prior GAO reports developed by you and your team, found that many Federal agencies were not fully compliant with the requirements of the Small Business Act intended to promote contracting opportunities for small and disadvantaged businesses.

Your reports found that several agencies have still yet to implement your team's recommendations that would bring every agency into full compliance with long-standing section

15(k) requirements. Implementing GAO's recommendations should be a priority, since Congress should be doing everything we can to help every agency's Office of Small and Disadvantaged Business Utilization maximize Federal contracting opportunities for small businesses.

QUESTION 1:

Mr. Shear, would you support Congressional action to make sure that Federal agencies implement your team's GAO recommendations, particularly recommendations that are necessary to bring a Federal agency into compliance with existing law?

Congressional action could help motivate agencies to implement GAO's recommendations to taking actions to address demonstrated noncompliance with section 15(k) of the Small Business Act. Noncompliance with section 15(k) requirements may limit the extent to which an Office of Small and Disadvantaged Business Utilization can advocate for small businesses.

Kenmar General Contracting, LLC

July 5, 2019

The Honorable Mazie K. Hirono
State of Hawaii

Dear Senator Hirono:

Thank you for your follow-up questions pertaining to my testimony on June 12, 2019 at the Senate Committee on Small Business and Entrepreneurship Hearing. Please find my answers to your follow-up questions below:

QUESTION 1:

Given your perspective as small businesses that have direct experience with federal contracting programs, what are your main concerns with these programs?

I have the following concerns with the small business programs based on my experience over the past 9 years:

1. I can honestly say that I would not have gotten to where I am today without the SBA 8(a) program. I entered the program in 2010 after having been a small but successful General Contractor in my town since founding my company in 2002. I founded my company using a credit card because as a female contractor I could not get a loan. When I entered the 8(a) program in 2010 after being in business for 8 years my company's annual revenues were \$500,000 and I had two employees. After 8 years in the 8(a) program my company's revenues last year were \$4,593,332 and at the end of 2018 Kenmar had 26 employees. My company now holds a Facility Clearance, we are bonded \$10M single/\$15M aggregate and we (for the first time in 2018) have no outstanding loans but instead have working capital in the bank. Here is my concern – all American business owners who are members of the Federal Government's socio-economic categories (Economically and Socially Disadvantaged Owned, Woman Owned, HUBZone Owned and Service Disabled Veteran Owned) should have the same opportunities to work hard and grow with the support of the SBA just like I have had in the 8(a) program. The assistance by the SBA is invaluable and most importantly the ability to be sole sourced small contracts is the only way to learn how to succeed and is the only way to level the playing field with larger, stronger, more experienced businesses. When the SBA, a Federal Agency, stands behind a tiny contractor because the SBA has determined through their rigorous background check and application process that the business owner has the propensity to succeed then that is a powerful tool for one Agency (Army, Air Force, Navy, etc.) to award to another Agency (SBA) and for SBA to in turn subcontract with one of their approved socioeconomic companies. Applying the 8(a) rules and application process to the WOSB, HUBZone and SDVOSB programs would be the best thing that the Senate can do to help small (very small...) disadvantaged businesses to grow.

Kenmar General Contracting, LLC

As I progressed through the 8(a) program I never depended on Sole Source awards to be my main revenue source. In the 8 years that I have been in the program Kenmar has received 7 Offer Letters to the SBA from various agencies. There were years that I received no Offer Letters yet my company continued to grow and become stronger because as a result of being able to negotiate with the Contracting Officer I learned to become a Federal Contractor without going out of business by bidding too low and failing. I applied these lessons in competitive Federal Contracting, local Government Contracting and as a subcontractor to large Primes. Sole Source authority is critical for a Contracting Officer to be able to start a company off small and then as they learn they can receive larger and larger awards which builds bonding capacity, working capital and most importantly the past performance needed to compete on larger competitive requirements. Contracting Officers should have the same authority that they have for 8(a) company sole sourcing with WOSB, HUBZone and DVOSB companies.

QUESTION 2:

Can you elaborate on the challenges you have encountered? What are some ideas for improving these programs for small businesses?

There are two challenges that I have encountered that I would like to explain. The first is the regulation in the WOSB program that the contracting officer can only sole source the contract when he or she determines that there are not two companies who would submit proposals on the job. As a WOSB I feel the need to help other WOSBs to succeed and as a result I am active in WIPP (Women Impacting Public Policy.) I attended ChallengeHer in Miami earlier this year (hosted by WIPP, American Express Open and SBA) and was really shocked to see so few hands go up when the moderator asked who in the audience has ever been awarded a Federal Contract? Out of about 300 people only about 20 hands went up including mine. I met a lot of women business owners who want to break into Federal Contracting at that meeting and one in particular was in a field that I needed some help in – a \$2M Air Conditioning job that I had been awarded sole source under the WOSB program since my company is a Mechanical Contracting company as well as a General Contracting company. I told her that I would be willing to award a subcontract to her to provide technical labor (HVAC Technicians) to assist us with a big installation on a secure Federal Facility. I sent her the scope of work, she had the right people and gave me a reasonable price and I hired her. Her team did very well and I paid her right away. Here is the concern....according to the regulations the Contracting Officer potentially has more than one WOSB Mechanical contractor who has past performance at the installation who could submit bids on an upcoming mechanical requirement. Of course, my company has greater capacity and more past performance but I question whether or not by helping another WOSB I just hurt my own company. That rule does not exist in the 8(a) program yet it does exist in the HUBZONE and WOSB sole source regulations and that is not conducive for us small businesses to team up and help each other succeed.

The second challenge that I have encountered numerous times has to do with being a subcontractor to a large Prime Contractor. I have put my company in this position many times in order to participate in projects that are larger than what I can bond and larger than what I can handle. Every time I do agree to be a subcontractor I think things will be different but they

Kenmar General Contracting, LLC

aren't - I never get paid quickly when I am a subcontractor to a large Prime Contractor. If there was a way to prevent large Prime Contractors from holding the Subcontractor's money for more than 5 days after they get paid that would be very helpful.

QUESTION 3:

What recommendations would you make to improve these programs?

Senator Hirono, I really do appreciate you following up with the above questions. I posed some challenges and some recommendations in my answers above. Overall, for future entrepreneurs like me I recommend that the Congress continue to support small disadvantaged business owners who have the propensity to succeed for themselves and their families and create jobs by leveling the playing field and using what works. Please extend the SBA 8(a) program regulations to the other socio-economic categories to provide parity in the set aside programs to disadvantaged small business owners.

Very Respectfully,



Vicki Marino
President



Follow-Up Questions for the Record

Background

Chairman Rubio, Ranking Member Cardin, and Members of the Committee, I would like to thank you for giving attendees of the “Reauthorization of the SBA’s Contracting Programs” the opportunity to directly answer questions for the record. Below are my responses to Senator Hirono’s questions.

Question 1:

Given your perspective as small businesses that have direct experience with federal contracting programs, what are your main concerns with these programs?

The process of obtaining 8(a) and HUBZone certification for my small business, Fearless, and interacting with other members of the HUBZone community has made me aware of the following major issues with SBA’s current contracting programs:

- **The government is falling short of its goals:** For the HUBZone program in particular, the Government has never met its goal of awarding 3% of all prime dollars to HUBZone firms, instead hovering around 1.9% to 2% each fiscal year. This percentage equates to well over \$7-8 billion in spending that does not make it into the communities that need it most, which is a significant missed opportunity for both the Government and underserved communities.
- **Not enough contracts are being set aside:** Contracting officers often voice that they are unable to find enough qualified HUBZone firms to set-aside contracts. However, HUBZone companies also complain they have a hard time finding contracts. One of the reasons for this issue is the expectation that if a firm wants to compete, they should respond to market research to get the work set-aside. However, HUBZone firms have a median size of 4 employees,¹ and with the thousands of RFI’s and Sources Sought released each year, a firm of that size just does not have the bandwidth to adequately respond to all of those requests. This results in a stalemate where the market research is laborious for both sides, and HUBZone firms in economically distressed communities continue to lose out.
- **Awarding sole sources to HUBZone-certified companies is too complicated:** Members of the HUBZone community have been repeatedly told by the federal workforce that awarding a sole

¹ U.S. Gov’t Accountability Off., GAO-15-234, Opportunities Exist to Further Improve HUBZone Oversight 56 (2014).



source to a HUBZone certified company is too complicated. A current hinderance to awarding sole source contracts is the requirement that a contracting officer must show that she/he does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns. There is confusion around the language “reasonable expectation,” which leaves this interpretation up to each contracting officer. This presents a barrier to awarding a sole source contract to a HUBZone company, as this could open the door to a protest – an action contracting officers seek to avoid.

Question 2:

Can you elaborate on the challenges you have encountered? What are some ideas for improving these programs for small businesses?

The certification process can be difficult and cumbersome for small businesses when the technology they use to interact with the government is inefficient, inaccurate, or difficult to use. This is the issue I ran into when I first tried to determine whether Fearless was qualified to access the HUBZone program. At the time, the SBA HUBZone map was slow, dated, and in dire need of modernization. It was also reporting bad data. In fact, our company move from Baltimore County to Baltimore City was driven by an error in the map that showed our location was an expiring HUBZone. In actuality, two census tracts were merging, and the map was reporting data for the wrong tract. Though we have since worked with SBA to modernize the mapping tool, the Certify platform, and the SBA.gov website, there are always opportunities to make SBA’s technology more interconnected, efficient, accessible, and user friendly.

Question 3:

What recommendations would you make to improve these programs?

I made the following recommendations (summarized below) on behalf of the HUBZone Council during my hearing testimony, and I stand by them as a small business owner and beneficiary of the HUBZone program:

- **Apply the HUBZone Price Evaluation Preference to Task Orders:** The current price evaluation preference language in the Small Business Act is very broad and does not exclude orders. We urge Congress to make the intent of the law clearer, which has the potential to increase HUBZone spending and positively impact the communities HUBZone companies serve.
- **Clarify Attempt to Maintain for the Contracting Workforce:** The HUBZone program requires that at least 35% of all employees within a certified company must live in a HUBZone area. When companies fall out of compliance after being awarded a contract, they must claim an attempt to maintain their residency requirement level and are unable to submit proposals for new



contracts until they are back in compliance. We recommend that SBA add a field to the Dynamic Small Business Search (DSBS) to clearly identify those HUBZone companies claiming attempt to maintain, thus providing clarity to the acquisition workforce that these parties are not currently eligible for an award and mitigating protests.

- **Streamline Award Eligibility for HUBZone Firms:** We recommend a change to an annual recertification to give contracting officers greater assurance that HUBZone contractors will still be eligible for award, even if the award occurs after the company was no longer eligible at the time of recertification. Furthermore, this change gives HUBZone companies a more efficient path toward compliance.
- **Locate Contracts in Designated HUBZone Areas:** To better provide opportunities to underserved communities in HUBZones, we recommend that federal agencies consider awarding HUBZone set asides for contracts that can be performed at the contractor's facility and discourage or limit the use of performance radius requirements from contracts.
- **Expand Sole Source Contract Opportunities for HUBZone Companies:** We support eliminating option years for sole source contracts, as well as simplifying and streamlining the rules for awarding these contracts. Eliminating the "reasonable expectation" requirement for the HUBZone, WOSB/EDWOSB and SDVOSB programs would increase these awards to small businesses.
- **Change Reporting Requirements to Accurately Reflect Contract Set-Asides:** The Council recommends agencies report progress toward small business based on how the contract was solicited, instead being able to count the same dollar value towards multiple goals. In other words, if an agency set a contract aside for the HUBZone program, then the dollars should only count as a HUBZone award.
- **Add the SBA to the Federal Acquisition Regulatory (FAR) Council:** Adding SBA to the FAR Council could help accelerate solutions to discrepancies between the agency and interpretations of the FAR.
- **Ensure Subcontracting Plan Compliance:** Presently, there is little to no recourse for prime contractors that fail to meet their small business subcontracting goals. The Council encourages the Committee to look at incentives that would spur subcontracting plan compliance.
- **Timely Implementation of the Runway Extension Act:** The HUBZone Council supports swift passage of H.R. 2345, the "Clarifying the Small Business Runway Extension Act of 2019," which requires SBA to issue final regulations implementing the Small Business Runway Extension Act by December 17, 2019 and creates a transition period allowing for small businesses to use a 3-year size standard rather than the 5-year standard for up to 6 months after SBA issues final regulations implementing the law.
- **Increase Government Contracting Opportunities with Universities:** Federal contracts with universities have historically resulted in a higher percentage of dollars that stay within the community. Therefore, the Council recommends Congress create exceptions for performance.



requirements for universities or allow them to qualify as similarly situated entities. This would boost small business subcontracting with universities, job placement and security clearances for students, and economic development within HUBZone communities.

Conclusion

In short, it is my hope that the small procurements enabled by set-asides are used to introduce more government accountability, prevent vendor lock and stagnation, and encourage innovation and a more diverse pool of contractors. Changes to SBA's contracting programs will not only benefit small businesses but also create much needed jobs through wealth creation in distressed areas. It is crucial that SBA allocates adequate resources to implement these changes.

Delali Dzirasa
President
Fearless

**Senate Committee on Small Business and Entrepreneurship Hearing
June 12, 2019
Follow-Up Questions for the Record**

Responses from Ms. Laurie Sayles

Questions from: Senator Hirono

SBA Reauthorization

QUESTION 1:

Given your perspective as small businesses that have direct experience with federal contracting programs, what are your main concerns with these programs?

As a person who has multiple certifications (ESWOSB, WOSB, SDVOSB, and 8(a)), it is important to have as much uniformity in the programs as possible. The rules for sole source contracts should be the same as should the amounts. Making the program requirements as uniform as possible and the certification verification simple should give contracting officers a greater ability to use the small business programs.

QUESTION 2:

Can you elaborate on the challenges you have encountered?

As a person who brought over five years of experience to government contracting, along with relationships as I had managed 125 people throughout the nation with federal government contract values up to \$11.5 million. So, with having WOSB and SDVOSB within the first two years of my company served as no value due to the sole source restrictions.

Additionally, I utilized the sub-contracting aspect in order to gain past performance with the Federal Government, only to have the prime that I selected be unfair in sharing the revenue from the contract. An agency CO that I supported for several years trusted me and my work and I brought the CO a certified 8(a) company so that she could open the doors for Civility Management Solutions. Well, I was fortunate to maintain a person on the contract; however, it produced enough revenue for me to pay myself minimum wage for two years of the four-year contract, as this was a \$4million sole source award.

At this time, if you subcontract, as instructed by the authorities the same authority is not able to protect you from prime contractors that take advantage of your efforts or your SBA programs.

What are some ideas for improving these programs for small businesses?

It would have been great if my WOSB or SDVOSB had the opportunity for a sole source because it would have allowed my company to get the full benefit of the intentions of the CO. The 8(a) was created to help assist and give business to the disadvantaged, and I certainly appreciate it; however, being a service-disabled veteran who has served this country in its freedom, an "earned status" gave me no advantage. Finding a means to open the other

programs outside of 8(a) to simply for CO's in sole source efforts would be a huge improvement.

Lastly, let me suggest that small business advocates in the federal agencies be empowered to take on this role (OSBDU office) can have oversight with subcontracting to ensure that prime contractors are held accountable for the arrangements previously made with subcontractors or mentees would be beneficial to the growth and stability of small businesses.

Since prime contractors report this data bi-annually, small business contracting officers should be required to review where each prime contractor stands regarding meeting their subcontracting goals on specified contracts. If the prime falls significantly below its stated subcontracting goals, justification from the prime and steps to meet the goal should be required.

QUESTION 3:

What recommendations would you make to improve these programs?

My recommendations would be that parity is brought to the programs for simplification. I agree with WIPP's recommendation that Congress put all socioeconomic contracting programs on equal footing. One group should not have a variance over another. However, I realize the 8(a) gives us nine years, so bringing parity to HUBZone's, WOSB's and SDVOSB's can be of a challenge in the timeframe offerings.

From my perspective, there are a few barriers to the Women Owned Small Business program. The first is that not all NAICS codes are eligible; whereas that is not applicable to any other program and it should not matter.

The steps of a contracting officer (CO) verifying the certification documentation, this process should be simplified by the CO searching a name in the DSBS system that reflects all small businesses, and their certifications.

I support that the SBA should be the certifier of VOSB/SDVOSB firms since they know how to administer certifications. The VA should be tasked with what it knows how to do—determining a veteran's eligibility. Putting the SBA in charge of the certification will not be accomplished without additional resources, due to the volume of veterans who are in the program

June 17, 2019

U.S. Senate Committee on Small Business and Entrepreneurship
428A Russell Senate Office Building
Washington, DC 20510

RE: June 12, 2019, Hearing on the "Reauthorization of the SBA's Contracting Programs"
Statement Submitted for the Record by Dr. Richard Amos, President,
COLSA Corporation, Huntsville, AL

Chairman Rubio, Ranking Member Cardin and fellow Members of the Committee:

Thank you for the opportunity to submit a written statement regarding the reauthorization of the contracting and business development programs provided by the Small Business Administration.

My name is Richard Amos, and I am the President of COLSA Corporation (COLSA), which is headquartered in Huntsville, Alabama. COLSA is a Veteran Owned Business that has supported the federal sector, especially the Department of Defense, for more than 35 years. We are a sole proprietorship and have consistently provided outstanding performance to our customers.

COLSA has significantly benefited from small business programs and from the emphasis of the federal sector on growing small businesses. The federal sector spend has substantially changed over the past decade in services. In the Department of Defense, services that include R&D now represent approximately 50% of the total spend; but the changes in revenue and employee size for small business identification have only minimally increased.

Currently, a major challenge in maximizing the continued growth of the small business contracting program and meeting the goals of that program is the fact that the size standards for both revenue-based and employee-based NAICSs have not been updated to a level that recognize the changes in the current market place for defining small businesses that support the federal sector.

The recent change to extend the rolling average to five years for the revenue-based NAICS codes in the Small Business Runway Extension Act of 2018 (Act) was an excellent step. However, the Act failed to address employee-based NAICSs for small business size determination.

The employee-based NAICS code 541715 supports research and development, represents a significant portion of the DoD services spend, and includes the most technically challenging support services. Yet, the employee-based NAICSs only have a one-year rolling average.

A one-year rolling average simply results in companies that outgrow their size in one month, only to find themselves small again with the loss of one contract within a very short time period. In fact, especially in the defense industry, a company that grows to 1,600 employees almost immediately finds itself competing in a market of companies with over 25,000 employees.

Just like the companies in the revenue-based NAICSs, small businesses in the employee-based NAICSs need time to grow and mature and to develop a strategic path for success. A five-year rolling average is essential for stabilization and growth for companies in the employee-based NAICSs for the same reasons that Congress has already recognized for revenue-based size standards. Companies build their strategic plans and invest in capturing work in the defense industry based on the contract life cycle. A contract in the R&D NAICS code area represents some of the more highly complex R&D services and products, so the contract life cycle is typically five years. It takes an average of two-three years after a requirement is officially identified to the time of contract award. A company must work two years ahead to be prepared to propose and to be competitively selected. Based on these timelines, five years is a minimum for this type of environment.

When you consider the facts that a revenue-based company goes from competing with companies of \$17-35M in revenue to competing with companies of \$50-100M in revenue as they grow into an employee-based company and that an employee-based company goes from competing with companies of 1,500 employees with revenue of \$200M to competing with companies such as Booz Allen with 25,000 employees and over \$5B in revenue, the scope of the problem is the same or even more substantial.

COLSA encourages the Committee to expand the Act to include the employee-based NAICS codes. This change will prevent the "yo-yo" effect between size categories and strengthen the nation's science and engineering base, as well as further fuel small business growth. For the federal sector, this change will help ensure adequate competition that will both drive a competitive cost structure and increase the utilization of small businesses within the contracting programs.

Congress has consistently recognized the criticality of ensuring the federal sector takes advantage of the latest technologies, provides the best equipment and services to our warfighters, and continues to fuel the economy through small business growth. The Department of Defense, as well as the entire federal sector, recognizes the challenges in incentivizing companies to create new technologies and to recruit and retain scientists and engineers that have a passion for innovation. Without additional changes in the size standards for the employee-based research and development NAICS code 541715, it will be difficult to maintain a stable base of small companies to help meet those critical needs.

Thank you for the opportunity to submit a written statement on behalf of COLSA in support of a five-year rolling average for employee-based NAICS codes. Please do not hesitate to contact me if I can provide any additional information that could be helpful to the Committee.

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Statement for the Record

**Senate Committee on Small Business and Entrepreneurship's
Hearing on Reauthorization of SBA's Contracting Programs**

June 25, 2019

United States Senate
Committee on Small Business and Entrepreneurship
Chairman Marco Rubio
Ranking Member Ben Cardin
428A Russell Senate Office Building
Washington, D.C. 20515

Chairman Rubio and Ranking Member Cardin,

The Employee-owned Contractor Roundtable (ECR), a coalition of federal government contractors that are ***wholly-owned through an employee stock ownership plan (i.e., 100% ESOPs)***, appreciate the opportunity to provide comments on the recent hearing your Committee held on reauthorization of SBA's contracting programs. ECR members represent several sectors of the economy and provide services for their government clients ranging from tractor engines and timing belts to advanced combat simulators and sonar detection technologies. ECR members are located across the entire United States and play a critical role in American industry.

ESOPs were established by Congress in the 1970s and allow employees to have an ownership interest in their company by providing each employee-owner with a portion of the company's stock on an annual basis. As employee ownership in America has grown, employee-owned businesses have consistently provided their communities, the economy, their workers and their customers with unique and tangible benefits. It is our strong belief that the benefits to the federal government from contracting with an ESOP are unique and that 100% ESOPs provide excellent service to their federal partners – and therefore, lawmakers have worked hard to expand this model and encourage more companies to be employee-owned. The government, dating back decades through today, have passed several pieces of legislation to incentivize the creation of more employee-owned companies.

This is hardly surprising as 100% ESOPs consistently report better job growth, fewer job reductions during economic downturns, disproportionately higher employee retirement



savings, narrower wealth gaps between workers and management, and strong resistance to foreign acquisition. All of these benefits stem from the inherent dynamics that arise when employees have a real stake in the business they contribute to on a daily basis. These company dynamics create unique employees who show greater job satisfaction and stay in their positions longer than their peers at non-ESOP companies. Workers then pass on to the federal government superior service when federal contracts are awarded to an ESOP company.

Because of the advantages ESOP's provide the U.S. economy, the federal government has looked for ways to support and promote ESOPs through tax policy. This support, however, has unfortunately not translated to federal contracting practices. We believe it is time to modernize federal contracting regulations to align with national policy objectives by advancing initiatives to support and expand employee-ownership within federal government contracting.

Benefits of Employee Ownership

When a company is owned by its employees, important socioeconomic dynamics arise that benefit workers, the company, the community and the national economy. Because ESOPs are regulated by a strict legal code that requires ownership to be broadly held across employees, from the mailroom to the boardroom, companies that are ESOP-owned – and particularly those that are majority or 100% ESOP – consistently report better job growth, fewer job reductions during economic downturns, boosted employee savings, and are less susceptible to job outsourcing or foreign interference. Principal among the data points that underscore the specific value ESOPs contribute to national economic interests are:

- Despite the financial stresses caused by the most recent economic downturn, **ESOPs kept more far more jobs than other private companies.** According to a 2012 study by Alex Brill, employment among employee-owned firms increased more than 60% from 2001-2011, while the private sector as a whole had flat or negative growth in the same period¹.
- **ESOPs reduce wealth inequality in the American workforce.** A 2016 study by Jared Bernstein shows that by increasing wage-earning employees' share of their business capital, ESOPs reduced the wealth concentration among the top 10 percent of employees by 2.5%².
- **ESOPs provide safe, secure retirement savings vehicles for millions of employee-owners:** At a time when 35% of private sector workers don't have access to traditional 401k benefits or a retirement savings vehicle, including 41% of millennials,³ ESOPs not only provide 100% retirement savings coverage for all their employee-owners, but an overwhelming number of businesses wholly-owned through an ESOP also provide a 401K.

¹ "An Analysis of the Benefits S ESOPs Provide the U.S. Economy and Workforce," Brill, Alex, Matrix Global Advisors, 07/26/2012

² "Employee Ownership, ESOPs, Wealth, and Wages," Bernstein, Jared, 01/2016

³ "Retirement Plan Access and Participation Across Generations," Scott, John, Pew Charitable Trusts, 06/21/2019



- **ESOPs stabilize employment, root productive capital in communities, and increase the assets and incomes of working families:** A 2017 study by the National Center for Employee Ownership (NCEO) found that ESOPs provide better net income and other benefits to key demographic groups targeted by current federal contracting programs. The [report](#)⁴ found that women, workers of color, and low-income individuals benefit greater when working at an ESOP company compared to a non- ESOP company. Additionally, the Rutgers School of Management and Labor Relationships recently found in a study that employee ownership narrows the gender and racial wealth gaps, which again, are key demographic groups targeted by current Small Business Administration (SBA) contracting goals. The chart below outlines the key findings from that study.

Wealth Comparison by Gender and Race	Median Wealth of Single Workers in the U.S.	Median ESOP Account Value of Low/Moderate-Income Workers in Rutgers Survey
African-American Women	\$200	\$32,000
African-American Men	\$300	\$180,000
Latina Women	\$100	\$143,500
Latino Men	\$950	\$200,000
White Women	\$15,640	\$172,000
White Men	\$28,900	\$323,500

Building the Assets of Low- and Moderate-Income Workers and their Families, 2019.
https://smlr.rutgers.edu/sites/default/files/rutgerskelloggreport_april2019.pdf

Congress Should Incentivize 100% ESOPs in Federal Contracting as a solution to a number of issues impacting small business growth concerns and the shrinking federal supplier base. During the hearing, both witnesses and SBA officials alike, discussed the need to find growth mechanisms that allow small businesses to graduate through the size standard ranks and identify new pathways to graduation. That is why we believe that incentivizing 100% ESOPs in federal procurement is good policy and can benefit both the federal government and small businesses alike. A recent [report](#)⁵ by Bloomberg shows that the number of federal contractors available to the federal government is shrinking, causing a dearth of options and a lack of flexibility for procurement managers (PM) and contracting officers (CO). For small businesses looking to grow, there is no avenue to real growth that provides small business owners with the ability to control their company's future without i) capping employment or negatively impacting their workforce, ii) stop pursuing federal contracting opportunities or iii) facing the prospect of selling to their larger competitors, private equity, or hedge funds. In this last scenario, often

⁴ *"Employee Ownership & Economic Well-Being,"* Wiefek, Nancy, The National Center for Employee Ownership, 06/15/2017

⁵ *"Federal Supplier Base Continued to Shrink in Fiscal 2018,"* Murphy, Peter, Bloomberg Law, 05/23/2019



times, when small business facing graduation from their size standard, or from small business set-aside work, are forced to sell, they have to sell from a position of weakness where the selling price doesn't accurately reflect the company's true enterprise value. In such cases, it is the employees that are negatively impacted, while simultaneously the government loses a prospective partner to do business with. This is wrong.

We believe that your Committee, and Congress as a whole, should look at advancing provisions identical, or similar, to recently introduced House legislation (H.R. 2022) that allows 100% ESOP businesses the ability to compete for small business set-aside contracts on a fair and open basis, among other provisions. This legislation specifically incentivizes only 100% ESOP companies of which there are currently only 75 companies in total (the majority of which are considered small under the NAICs standard) that participate in federal contracting work. If passed, we think this legislation would also:

- **Allow 100% ESOPs to grow beyond small while protecting their ESOP:** This legislation would help 100% ESOPs protect their ESOP, their culture, and their employee-owners retirement future from having to sell to larger, non-ESOP companies just because they are about to graduate from their small business size standard. Further, it would allow 100% ESOPs, which have proven to be great partners to the federal government, to continue to service contracts;
- **Provide a pathway for growth for small businesses:** Small businesses could convert to 100% ESOP even before hitting their small business size threshold. This legislation would encourage them to convert sooner and would enable these companies to grow at a quicker, steadier pace. 100% ESOP companies are built for the long term, have the resources to invest in their company, and will be more able to compete against larger companies as they grow from small to medium;
- **Protect the ability for small businesses to compete for federal contracts:** Even if there are some 100% ESOP mid-size businesses that will compete for contracts, generally COs and PMs like doing business with small businesses and the small businesses have an edge when competing for small contracts. The COs and PMs like the smaller business because they are much easier to deal with and tend to be less expensive and more responsive and provide better value. We believe it is very unlikely that a 100% ESOP company with more than 1,000 people would have an advantage over a small business on contracts requiring 10's to 100's of people. Further if the contract is to provide a prototype or product, small businesses tend to win on innovative ideas and the creative capabilities of a small group of people. As such, there is no inherent advantage to being larger; and
- **Continue Congress' tradition of incentivizing ESOPs:** Congress has a long history, dating back to the 1970's of promoting employee ownership. Study after study has shown that ESOPs provide greater retirement savings, share wealth among their employee-owners and



create a unique work culture where all employees are aligned in meeting their company's long-term goals. The federal government has incentivized ESOPs through tax policy, through resolution, and in the Small Business Administration. We believe Congress is missing an opportunity to incentivize the creation of more employee-owned companies through federal procurement practices. This legislation, if enacted, would meet Congress' historic tradition of creating more employee-owned companies while ensuring the federal government maintains its relationship with business partners they've long worked with to complete federal contracts in a timely, and effective, manner. ESOPs, provide the federal government with more partners in federal procurement, create additional flexibility for COs and PMs to execute work and would provide a pathway for small businesses looking to graduate from small to medium in a position of strength.

Conclusion

We appreciate the Committee's interest in addressing the mid-tier size issue. Ensuring small businesses have appropriate opportunities to prosper is a goal we all share. While there is no silver bullet solution to address the mid-tier sizing issue, we believe this represents a reasonable first step to provide greater value to the federal government while simultaneously expanding access to enhanced retirement savings and other benefits for America's workers.

Thank you for the opportunity to submit this testimony and the members of ECR look forward to hearing the solutions put forward by Congress to address this critical issue. If you need to contact us, please reach out to Matt Pearce at mpearce@vennstrategies.com.

Respectfully,

The Employee Owned Contractors Roundtable





Response to Senator Romney's Comments During June 12, 2019 Hearing "Reauthorization of SBA's Contracting Programs"

Chairman Rubio, Ranking Member Cardin, and Members of the Committee, I would like to thank you for the opportunity to submit additional testimony for the Reauthorization of the SBA Contracting Programs Hearing on June 12, 2019. During the hearing, Senator Mitt Romney, from the state of Utah, shared a few remarks in the government panel that preceded the industry panel in which I testified. I wanted to take the opportunity to respond to his remarks, since Senator Romney departed prior to my testimony, leaving me with no formal opportunity to address his comments in person. I thank the Committee for accepting this response into the official record.

I take it in good faith that Congress will establish laws that it believes will benefit our nation. Therefore, I feel compelled to respond to Senator Romney's stated belief that "requiring the government to acquire products based upon requirements other than quality, price, and efficiency of the product being sold is a mistake." I believe that this statement is based on misconceptions regarding the purpose and history of SBA's programs.

Why SBA's Programs Are Necessary

I agree with Senator Romney on one point — in an ideal free market system, SBA's programs shouldn't exist. Where our opinions appear to differ is that I do not believe that our nation has historically operated in a free market system. As such, the SBA programs were developed or amended to address historical shortcomings that prevented free market ideals from thriving. At their core, these programs also mimic free market thinking by allowing agencies to choose from qualified firms, with no ramifications for falling short of small business goals.

A free market is meant to be impartial and reward the most qualified companies with the best products. The US market has never been impartial in this regard. For example, even though women own more than one-third of all businesses in the United States,¹ they are 21% less likely to be awarded federal contracts than their counterparts. Even more striking, despite women being almost 51% of the US population, only once since 2007 (in FY15) has the

¹ "Women-Owned Businesses," Library, United States Census Bureau, last modified March 31, 2017, https://www.google.com/url?q=https://www.census.gov/library/visualizations/2017/comm/women_owned_businesses.html&sa=D&ust=1560788808562000&usg=AFQjCNFMjL1_jmYDO28YyCjKVu4Hx3GPeg.



federal government met its goal of awarding 5% of prime contracts to women.² Even as the gender gap narrows in private sector funding, women still receive 31% less funding than men, and wage disparities make it harder for women to pay off student loans and improve their credit scores than their male counterparts.³ This is more than a numbers issue — disparities exist in the amount of money women earn despite higher educational attainment, with women making 85% of what men earn despite being more likely to have earned both undergraduate and graduate degrees than men.⁴

These disparities aren't due to a lack of ability on the part of disadvantaged groups. Rather, they are holdovers from a time when taxpayer money and Government policy overlooked or sidelined people because of their gender, racial background, ethnicity, or geographic location. The perspective that "requiring the government to acquire products based upon requirements other than quality, price, and efficiency of the product being sold is a mistake" runs the risk of unintentionally implying that businesses owned by women and socially disadvantaged groups in the United States are disproportionately unqualified and unmarketable. Yes, in an ideal world, companies would always succeed or fail based on the merit of their products and the quality of their service, but we have inherited an imperfect world in which SBA's programs are part of undoing a history of discriminatory policy and social inequity in a manner necessary to facilitate the full potential of a free-market system.

The 8(a) program has focused on socially disadvantaged individuals since 1978⁵ in accordance with the following definition from 13 C.F.R. § 124.103(a):

"Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control."

The number of groups presumed to be disadvantaged in § 124.103(b)(1) includes, at the most general level, "Black Americans; Hispanic Americans; Native Americans . . . Asian Pacific Americans . . . Subcontinent Asian Americans . . . and members of other groups designated from time to time by SBA." The fact that so many groups of people have been "subjected to racial or ethnic prejudice or cultural bias within American society" points to the reason 8(a) exists in its current form — access to opportunity has been suppressed for so many Americans and for so long that our Government has enacted policy to encourage reinvestment in these disadvantaged groups.

² Jackie Calmes, "Businesses Owned by Women Less Likely to Win U.S. Contracts, Study Shows," New York Times, February 2, 2016, <https://www.nytimes.com/2016/02/03/business/smallbusiness/businesses-owned-by-women-less-likely-to-win-us-contracts-study-shows.html>.

³ Rohit Arora, "The lending gap narrows for women business owners, but it's still 31% less than for men," CNBC, March 7, 2019, <https://www.cnbc.com/2019/03/07/the-lending-gap-narrows-for-women-business-owners-nationwide.html>.

⁴ Jay Shambaugh and Ryan Nunn, "How women are still left behind in the labor market," The Brookings Institution Blog, April 10, 2018, <https://www.brookings.edu/blog/up-front/2018/04/10/how-women-are-still-left-behind-in-the-labor-market/>.

⁵ U.S. Library of Congress, Congressional Research Service, SBA's "8(a) Program": Overview, History, and Current Issues, R44844 (2019), 5. <https://fas.org/sgp/crs/misc/R44844.pdf>.



Similarly, the Historically Underutilized Business Zone Program (HUBZone) exists because of the geographical isolation of rural businesses, the Government acquisition of traditional Native American lands, and Federal policies like redlining that deemed some neighborhoods less desirable than others. The fact is that the market isn't finding and rewarding innovation in economically distressed areas. In the tech industry, a third of all venture capital investment in the country in 2017 (approximately \$25 billion)⁶ was concentrated in San Francisco, and venture capital generally flows to more densely populated, affluent areas of the country. For small businesses in less affluent cities and neighborhoods, particularly small businesses located in HUBZones like my own, Government programs are helping to fill in the gaps left by private investors and venture capitalists.

Unfortunately, these gaps in opportunity also exist for veterans, who have higher rates of disability⁷ and homelessness⁸ than their civilian counterparts. Alongside Government programs that have significantly lowered veteran unemployment,⁹ the SDVOSB program was created to support veterans in building their own wealth. Given the higher rates of both self-employment and financial hardship in the disabled population when compared to the general population,¹⁰ this program helps offset a disparity in seed funding between service-disabled veterans and able bodied entrepreneurs competing in the same space.

The Compound Effects of Historical Policy

In his comments, Senator Romney also argued that people with a net worth of \$750,000 should not be eligible for SBA programs. Senator Romney specifically stated "this does not strike me as a program for underprivileged individuals." It should be noted that for the WOSB program he specifically mentioned, a woman is defined in 13 CFR § 127.203(a) as economically disadvantaged "if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business." The \$750,000 limit on net worth is not only about personal wealth — it's also about the access to capital of her competitors and her ability to grow her business. Similarly, for the 8(a) program, individuals are considered economically disadvantaged if they have a net worth of less than \$250,000 when they

⁶ Richard Florida, "The Extreme Geographic Inequality of High-Tech Venture Capital," CityLab, March 27, 2018, <https://www.citylab.com/life/2018/03/the-extreme-geographic-inequality-of-high-tech-venture-capital/552026/>.

⁷ "Employment Data for Veterans With Disabilities," Fact Sheets, ADA National Network, last modified January 18, 2018, <https://adata.org/factsheet/employment-data-veterans-disabilities>.

⁸ "Veteran Homelessness," National Alliance to End Homelessness, last modified February 2017, <https://endhomelessness.org/resource/veteran-homelessness/>.

⁹ Natalie Gross, "Vet unemployment hit an all-time low in 2018. Mission accomplished?" *Military Times Rebootcamp*, January 11, 2019, <https://rebootcamp.militarytimes.com/news/employment/2019/01/11/vet-unemployment-hit-an-all-time-low-in-2018-mission-accomplished/>.

¹⁰ Maija Renko, Sarah Parker Harris, and Kate Caldwell, "Entrepreneurial entry by people with disabilities," *International Small Business Journal* Volume 34, no. 5, (April 2015): 555-578, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.821.8034&rep=rep1&type=pdf>.



enter the program, with the amount increasing to \$750,000 for continuing eligibility. The 8(a) thresholds were established in 1989¹¹ and have not been adjusted for inflation in the 30 years since.

These programs are not intended to help only those of the most modest economic means. They are also intended to counteract social disadvantages that limit access to business opportunities and capital and allow people to grow their businesses and wealth. If the Government were to reduce these thresholds rather than increase them as has been proposed for the 8(a) program,¹² the beneficiaries of these programs would rapidly outgrow them when they most need support to establish longevity. What's more, investing in small businesses at higher thresholds means creating the wealth that will eventually render SBA's programs obsolete. An economically disadvantaged individual who is able to build sufficient capital through an SBA program can themselves fund other small businesses through investment or build wealth within their communities, thereby reducing reliance on Government funding and support.

As a resident of Baltimore and small business owner, I have seen the necessity and benefit of the SBA's programs on a personal level. In my testimony, I described Baltimore as a "tale of two cities" due to the extreme gap in opportunity and wealth between the haves and the have-nots. Much of that disparity is a direct result of historical Government policies. Redlining in particular has led to such disparities in wealth based on location that comparing a 1930s redline map of Baltimore to a present-day census tract map shows the same areas still suffering almost 90 years later from high rates of poverty, reduced life expectancy and health outcomes, and low rates of homeownership and college education.¹³ These locations closely overlap with qualified HUBZone locations, which shows that these communities are indeed Historically Underutilized as the HUBZone program's name suggests.

As stated in my testimony, this gap in opportunity is an urgent matter for many, with a 20-year gap in life expectancy between the wealthier and poorer residents of Baltimore.¹⁴ In order to escape these cycles, the most disadvantaged in our communities need to be able to build wealth. Current Government policy must actively counterbalance historical Government policies that disenfranchised segments of our American populus. Across the nation, SBA's programs are creating opportunities that work to counteract these historical inequities, increase the function and efficiency of the Government, and further the vision of a merit-based economy that Senator Romney and the rest of our citizenry share. For example, Skylight, a HUBZone-certified company, modernized the U.S. Citizenship and Immigration Services' E-Verify system and improved the speed of verification for over 800,000

¹¹ U.S. Library of Congress, Congressional Research Service, SBA's "8(a) Program": Overview, History, and Current Issues, R44844 (2019), 7, <https://fas.org/sgp/crs/misc/R44844.pdf>.

¹² U.S. Small Business Administration, "SBA Proposes Certification Rule for Women-Owned Small Businesses Seeking Comments by July 15," *PR Newswire*, May 14, 2019, <https://www.prnewswire.com/news-releases/sba-proposes-certification-rule-for-women-owned-small-businesses-seeking-comments-by-july-15-300849947.html>.

¹³ JPMorgan Chase & Co., "The Racial Wealth Divide in Baltimore," January 30, 2017, https://prosperitynow.org/files/resources/Racial_Wealth_Divide_in_Baltimore_RWDI.pdf.

¹⁴ Devin Bartolotta, "20-Year Gap in Life Expectancy Between Richer, Poorer Areas of Baltimore," *CBS Baltimore*, July 6, 2017, <https://baltimore.cbslocal.com/2017/07/06/life-expectancy-baltimore/>.



enrolled employers.¹⁵ The So Company, an 8(a)-certified SDVOSB, has performed Human Centered Design services¹⁶ and created digital content for the Department of Veterans Affairs,¹⁷ thereby fueling new products and services featuring content created by veterans for veterans. My own 8(a)- and HUBZone-certified company, Fearless, has had the opportunity to redesign and modernize the HUBZone map through an SBA contract.¹⁸ These successful projects demonstrate the opportunity for SBA's programs to bring more efficiency and innovation to Government spaces. Every one of these companies is a member of the newly formed Digital Services Coalition, a community of like-minded government contractors dedicated to transforming the way digital services are delivered in Government spaces.¹⁹ These small businesses are more than passive beneficiaries of Government funding. The SBA's programs have allowed many of us to do the important work of modernizing, reimagining, and creating Government technology.

Conclusions

In short, it is my hope that the Senator from Utah reconsiders his stance on Government set-asides and continues to investigate the potential benefits of reauthorizing SBA's programs and maintaining the net worth limit. It is imperative all decision makers in Government understand the value of the SBA's programs, not only for the sake of the underserved citizens communities who are recipients of these awards, but also for the sake of making the United States a more equitable, innovative, and secure country in which historically underrepresented groups have the same access to opportunities as historically privileged groups. Furthermore, the small procurements enabled by set-asides introduce more government accountability, preventing vendor lock and stagnation while encouraging innovation and a more diverse pool of contractors.

The United States has a history of using both policy and tax funding that have benefited certain communities, while harming others. So, as we consider the future of small business programs, both policy and tax dollars **must** be used to help correct the breach they helped to create. Establishing free-market ideals depends on this stance.

Delali Dzirasa
President
Fearless

¹⁵ "Modernizing employment eligibility verification," Portfolio, Skylight.digital, accessed June 19, 2019, <https://skylight.digital/work/uscis-everify-modernization/>.

¹⁶ "Human Centered Design for the Department of Veterans Affairs," The So Company, <http://www.thesocompany.com/case-study/va-hcd/>.

¹⁷ "Content Strategy for Veterans," The So Company, <http://www.thesocompany.com/case-study/va-vetsdotgov/>.

¹⁸ "Mapping success in underutilized communities: Reinventing the HUBZone Map," Case Studies, Fearless.tech, <https://fearless.tech/work/all/case/hubzone-map>.

¹⁹ "Answering the call by building a community," Digital Services Coalition, <https://digitalservicescoalition.org/#/story>.

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**TESTIMONY FOR THE RECORD
SENATE SMALL BUSINESS & ENTREPRENEURSHIP HEARING ON
REAUTHORIZATION OF THE SMALL BUSINESS ADMINISTRATIONS CONTRACTING PROGRAMS**

This written testimony is provided by Ho-Chunk, Inc. (Ho-Chunk). Thank you for considering these comments to the June 12, 2019, hearing held by the U.S. Committee on Small Business & Entrepreneurship. We would like to thank Chairman Rubio, Ranking Member Cardin, and other members of this Committee for carefully reviewing the programs created under the Small Business Act in order to once again reauthorize this important piece of legislation.

Ho-Chunk is a tribally-owned corporation of the Winnebago Tribe of Nebraska. Ho-Chunk is a parent company to tribally owned government contractor subsidiaries providing economic development to the citizens of the Winnebago Tribe as well as the local community. The trust relationship that exists between the federal government and tribal governments creates a responsibility to provide for the wellbeing of tribal governments and their citizens. As such, entity-owned companies are authorized to participate in the SBA 8(a) program under unique rules for the primary purpose of economic development of some of the most underserved areas in the country. Tribes, such as Winnebago, utilize the proceeds from government contracting to build, sustain, and operate their communities, for the betterment of their people in terms of education, healthcare, public works and other community sustaining activities.

Ho-Chunk Inc. has been the catalysis for major improvements for the quality of life for the members of the Winnebago Tribe of Nebraska. Before Ho-Chunk Inc the unemployment levels on the Winnebago Reservation were at 40% and 43.9% of the population lived below the poverty line. Now the unemployment rate is now 25.8% and poverty rate has dropped to 31.4 in 2016. Household income has grown on the reservation 83% from 2000 to 2016, with a median income of \$45,200, which is outpacing growth in Nebraska, Iowa and South Dakota. Additionally, Ho-Chunk Inc. pays millions of in dividends to the Winnebago Tribe on an annual basis which help fund housing projects and other important communal needs. While great strides have been made, there is still much work to be done. To help service this need, part of Ho-Chunk's core functions involve government contracting. In this capacity Ho-Chunk subsidiary companies provides services to a number of federal agencies. This testimony will highlight one particular issue – category management—that has had a detrimental impact on Ho-Chunk's ability to serve the federal government, which also impacts the economic security of the Winnebago Tribe. Ho-Chunk's request is that Congress consider exempting small businesses from category management as part of its reauthorization of the Small Business Administration's contracting programs.



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Statements by Chairman Rubio and the Administration at the hearing show the need to protect contracting for small businesses. Chairman Rubio pointed to a 32% decline of small federal contractors working on unclassified prime contracts from 2009 to 2018. This is compared to a 4% decline for large vendors during that same time period¹.

Ho-Chunk's experience with government contracting during this period shows a direct correlation between category management and reduced contracting opportunities for Ho-Chunk and its subsidiaries. The result of category management has been to place small businesses at a disadvantage for obtaining contracts that are being forced into category management vehicles, making them unavailable to small businesses.

Category management also runs counter to the SBA's goal of making SBA-certified companies a better option for Contracting Officers. Category Management vehicles create a barrier in development of small businesses which is critical for companies like Ho-Chunk which in turn harms the nation's economy. Therefore, the processes should be simple and efficient, allowing Contracting Officers to meet small business goals for all types of small and minority owned companies.

Mr. Robb Wong, Associate Administrator for the Office of Government Contracting and Business Development at the Small Business Administration, highlighted the negative impacts of Category Management on small businesses during the hearing. In his response to the questions regarding the decline of small businesses in government contracting, Mr. Wong stated that: "Category Management has a deleterious effect on small businesses because when contracts go to large and complex contract vehicles for which small businesses do not qualify, or miss a short onboarding window, those small businesses don't have many contracts to replace those they lost. This in turn leads small businesses to quit seeking Federal contracts which in turn hurts the country's industrial base."

Consequently, Mr. Wong recommended that small businesses programs, such as 8(a) BD, be exempt from category management vehicles and/or for an increase in the sole source thresholds so that small businesses can have a better chance at participation in Category Management vehicles. Ho-Chunk fully supports this position and requests the Committee take steps towards creating this exemption.

Government contracting is a core component of Ho-Chunk's mission to provide economic development and self-sufficiency to the Winnebago people, and Category Management represents an immediate and direct threat to this undertaking. Ho-Chunk subsidiaries have been denied the opportunity to pursue government contracts that it had previously been awarded and in which they had developed a substantial expertise. In addition to these lost revenues, Ho-Chunk has been forced

¹ Murphy, Paul. "Federal Supplier Base Continued to Shrink in Fiscal 2018", Bloomberg Law, Bloomberg L.P. May 23, 2019. Web June 26, 2019.



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to expend additional capital in order to attempt to find alternative solutions to these lost opportunities. Therefore Ho-Chunk supports legislation that would exempt specific small business contracts from category management contract vehicles and Ho-Chunk supports the SBA's recommendations on this issue.

Thank you for considering our comments.




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June 25, 2019

Dear Senator Romney,

This correspondence is in response to the Senate Small Business hearing on the SBA's small business programs. I can speak firsthand to the continued need for appropriate small business set aside programs. Without those set asides, companies like mine would have gotten lost in the maze that is often the goal of large corporations.

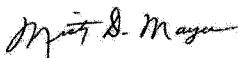
Over the past 17 years, my company has delivered high quality services at a competitive price. We are the opposite of your comment regarding small business being less effective and a higher cost.

According to the Bureau of Labor statistics, since the Great Recession, small businesses have created 62% of all net new private-sector jobs. Additionally, America's business is overwhelmingly small business. The well-established SBA program supports growth in our country. Research shows that small business firms with less than 100 workers accounted for 98% in the US in 2016.

Why would you or any other elected officials want to disrupt all that small businesses bring to our great nation?

Thank you for the opportunity to share my direct disagreement with your comments of June 12, 2019.

Respectfully,



Misty Mayes, PMP, CLSS, CCMP
President | Management Solutions, LLC
Women Impacting Public Policy Board Member



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Comments for the June 12 Hearing Record RE: "Reauthorization of the SBA's Contracting Programs"

We are writing to respond to comments made during the Committee's June 12 hearing, "Reauthorization of SBA's Contracting Programs." As a preliminary matter, we want to thank the Committee for its work on reauthorizing SBA's contracting programs, and for its recognition that these programs need to be modernized to allow small businesses to effectively compete in today's federal buying environment. Contracts are larger than ever before and vendors' access to such contracts has been limited through buying initiatives such as category management. As a result, small businesses find winning contract awards even more challenging. According to Bloomberg Government, the number of federal contractors working on unclassified prime contracts is at a 10-year low, despite a steady rise in government contract spending. In FY18, the vendor count of 115,000 contractors reflected a 27% drop in a 10-year period.

During the hearing, a question arose regarding why small business contracting programs that restrict competition are necessary in a free market system. To answer this question, we encourage the Committee to read Section 2(a) of the Small Business Act:

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

Stated otherwise, the Act clarifies that a principal purpose of the programs is to maintain a robust free market system. By ensuring that small businesses receive a portion of federal contracts, the government guards against market capture by the largest, most sophisticated companies. Those companies are no doubt integral to the success of the

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government, but relying on them *exclusively* would lead to a non-competitive environment where prices rise unchecked, innovation is not encouraged, and jobs are lost. We would have an economy that does not work for workers, consumers—or the government itself.

While the government has been able to meet its 23% goal of procuring goods and services from small businesses, other Congressionally mandated goals of 5% for women and 3% for certified HUBZone companies have failed to perform. The women-owned goal has been met only once and the HUBZone goal has never been met. To eliminate these programs altogether would result in direct competition between small businesses and multibillion dollar corporations for government work. Multibillion dollar companies would win most awards at the expense of small businesses. This is evidenced by the fact there are less than 400 midsize companies—which do not receive set-asides—in the government contracting marketplace, due to the difficulty of competing with very large businesses.

The small businesses that are part of our federal contracting ecosystem are asked to compete on quality and price. They spend resources preparing responses to RFPs and task orders, as all other companies are asked to do. Designation as a small business contractor to the government is not the equivalent of a government handout. Taxpayers do not fund small business participation, but instead provide resources and programs to assist small businesses in becoming successful contractors. While we agree with the statement made at the hearing that "requiring the government to acquire products based upon requirements other than quality, price, and efficiency of the product being sold is a mistake," we take issue with the presumption that contracting with small businesses means sacrificing quality, price and efficiency. In our view, nothing is further from the truth.

Two programs are designed for economically disadvantaged individuals – the Section 8(a) program and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) program. These programs attempt to give access to the federal marketplace for women and minorities that have limited resources, in order to increase the sources of supply to the federal government. These programs also encourage small, innovative companies to participate in the federal marketplace. In analyzing the appropriate threshold for economic disadvantage, we encourage Congress and the Administration to consider the amount of resources required to start and sustain a federal government contractor, including set up costs, costs of compliance with all applicable federal acquisition regulations regarding labor, employment, accounting practices and general contract compliance. These costs, coupled with the upfront business development costs required in the current procurement environment, are simply out of reach to entrepreneurs without some resources to secure financing for endeavors. In other words, the term economically disadvantaged (woman or minority-owned) small business is really meant to define an economically disadvantaged entrepreneur attempting to be competitive in the federal marketplace. We submit that the \$750,000 level is the minimum threshold possible for success of these entrepreneurs. Access to financing is necessary for success and innovation in the federal marketplace, so, we are not referencing the poverty level or the average American. We are referring to entrepreneurs, women and minorities – we

need to look at this group in order to determine what is considered disadvantaged among those individuals.

If one considers the history of these programs – dating back to the inception of the Section 8(a) program – President Nixon signed it into law after the Watts riots with the intent to create role models that provide encouragement to the disenfranchised. Parren Mitchell, often referred to as the grandfather of the 8(a) program, said the program's intent was to create jobs and allow socially and economically disadvantaged individuals access to federal agencies through the tripartite agreement with SBA to ensure performance by 8(a) firms, and through the sole source mechanism in place at the time, to allow ease of procurement. Therefore, in order to be successful and create role models, we need to start with individuals who have some, but not a lot of wherewithal to get financing to grow their businesses and be successful.

In addition, there is nothing to show that these companies do not provide service at a fair and reasonable price and nothing requiring they are the lowest priced. When one looks at the cost of the competitive procurement process, and factors that in, doing business with these firms, assuming they are technically capable, is a much more effective way for the federal government to procure the goods and services they need. Indeed, the Section 809 panel recommends doing away with competitive procurements as we know them today, in favor of more direct awards. This is exactly what these programs provide.

Finally, the economy of Montgomery County, Maryland is an example of the importance of federal facilities and the contractors that serve it—large, midsize and small. Montgomery County is ranked number one in Health IT small businesses that sell to the federal government, and second overall for small businesses that are government contractors¹. Encouraging small companies to grow in public sector contracting has led to a healthy economy, job creation and innovation in the County. On behalf of the Chamber and its GovConNet Council, we urge the Committee to stay the course with respect to small business contracting programs. We applaud changes to improve the programs but request they not be dismantled.

Thank you for consideration of our views.

Sincerely,



Georgette "Gigi" W. Godwin
President and CEO

¹ Montgomery Cnty. Chamber of Commerce, *MCCC Ranked #2 in Washington Region*, (July 7, 2017), <https://web.mcccmd.com/news/newsarticledisplay.aspx?ArticleID=24>



Testimony of Kimberly Teehee, President
Native American Contractor's Association

June 12, 2019

Senate Committee on Small Business &
Entrepreneurship

NACA's Mission: To enrich self-determination through preservation and enhancement of government contracting participation based on the unique relationship between Native Americans and the federal government.

On behalf of the Native American Contractor's Association, I request that you consider this testimony as part of the record for the June 12, 2019, hearing by the Senate Committee on Small Business & Entrepreneurship on the Reauthorization of the SBA's Contracting Programs. This testimony will explain the relationship between the United States and Native Americans in Government Contracting.

Thank you, Chairman Rubio, Ranking Member Cardin, and distinguished members of the Committee for carefully considering programs created under the Small Business Act in order to once again reauthorize this important piece of legislation. The mission of the U.S. Small Business Administration includes the charge to develop and diversify the economies of the hundreds of thousands of Native American, Alaska Native, and Native Hawaiian communities (collectively "Native Enterprises" or "Native Americans") all across Indian Country. For this reason, we wholeheartedly encourage a reauthorization of the Small Business Act and offer the following to provide historical and legal background support towards this worthwhile effort.

The Constitution is explicit that the federal government has a special relationship with Native American communities, holding true with economic relations, such as federal government contracting.¹ The Constitution is reinforced by treaties and affirmed strongly with jurisprudence. The Constitution dictates that such a relationship must "further[s] the federal policy of Indian self-determination, the United States' trust responsibility, and the promotion of economic self-sufficiency among Native American communities."² The relationship between the United States and Native Americans is "marked by peculiar and cardinal distinctions which exist nowhere else."³ The Constitution, with the Indian

¹ Native Americans, for SBA purposes, are considered Tribes, Alaska Native (Alaska Native Corporations), and Native Hawaiians.

² *AFGE v. U.S.*, 195 F. Supp. 2d 4, 18 (D.D.C. 2002), *aff'd* 330 F.3d 513 (D.C. Circ. 2003); *see also* U.S. Constitution, art. I, § 8, cl.3.

³ *Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831).

Commerce Clause, was enacted in 1789, to be followed by the first Native American legislation in 1790, the Intercourse Act. “[B]y the 1870s, the government had successfully placed Native Americans in a state of coerced dependency . . . [T]his relationship of dependency between the United States and the Indian people was forcibly established.”⁴

When the SBA’s mission was expanded in the 1980’s to explicitly confront the rampant poverty across Indian Country, few people could have anticipated substantial economic advancement opportunities that were created as a result of this mission and the positive impact participation in the 8(a) program would have for tribes, Alaska Native Corporations, and Native Hawaiian Organizations (collectively “Native Enterprises”) and the communities they support. In contrast to individual participants, Native Enterprises participating in SBA programs benefit entire communities. For instance, one economic study alone has demonstrated that 75% of the net profit a Native American/Alaska Native owned firm goes directly back to provide benefits to the community. The GAO has confirmed the myriad benefits these Native American owned firms provided to the tens of thousands of shareholders/citizens/members in the most impoverished of situations. Indeed, *the only firms required* to submit how money is spent that is earned through the SBA programs are those that are owned by Native Enterprises. Despite the undeniable success of the program, the poverty suffered by Native Americans continues to be second to none. Statistics, Congressional studies, and testimony have repeatedly reiterated these facts. The social ills that accompany the poverty are constantly present but government contracting business profits returned to Native communities are making a difference. Government contracting plays a

⁴ *Cobell v. Babbitt*, 91 F. Supp. 2d 1, 7 (D.D.C. 1999), *aff’d and remanded sub nom. Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001).

critical role in helping achieve economic self-sufficiency of Native Americans by providing resources which would not otherwise be available.

Native Americans still exist in the most impoverished of circumstances but government contracting has provided, as the Congressional record demonstrates, one of the few methods Native Americans can use to bring up entire communities. Access to government contracting has long been an accepted means to fulfill the United States' fiduciary and trust obligations to Native Americans. One former Deputy Administrator of the SBA testified to Congress that "8(a) is an important source of revenue for Native American firms in particular . . . Indian Reservations are the underserved communities of underserved communities. While it may be challenging to encourage lenders to expand their rural or inner city programs, we all know the challenges are much greater for Indian Reservations."⁵

This was further recognized and affirmed in testimony given to Senate in June of 2018 by Robb Wong, Associate Administrator, Office of Government Contracting and Business Development, U.S. Small Business Administration. Mr. Wong recognized the obligations that Native Enterprises have to present and future generations, preserving their cultures, protecting elders and languages, and preserving their lands.

⁵ *Preferences for Alaska Native Corporations: Hearing before the S. Subcommittee on Contracting Oversight, Committee on Homeland Security and Gov't Affairs*, 111th Cong. (2009) (written statement of Sarah Lukin) (quoting Jovita Carranza, Deputy Administrator, SBA); see also *Report of the Task Force on Indian Economic Development of the U.S. Department of the Interior: Interior Task Force Report* at 240, July 1986 ("The Federal government has assumed a permanent trust responsibility for Indians."); see also S. Hrg. 96-7, *Indian Economic Development Programs: Oversight Hearings Before the Committee on Interior and Insular Affairs of the U.S. House of Representatives*, 96th Cong. (1980), at 1, 10, and 21 (statements of Chairman Kogovsek; Thomas Sherman, Acting Deputy Assistant Secretary for Public Housing and Indian Programs, Department of Housing and Urban Affairs; and Theodore Krenzke, Acting Deputy Commissioner of Bureau of Indian Affairs, Department of the Interior, respectively). S. Hr'g 101-150, *1989 Select Committee Hearing on Indian Participation: Indian Participation in Government Procurement Contracting: Hearing Before the Select Committee on Indian Affairs of the U.S. Senate*, 101st Cong. (1989) (statement by Robert W. Perry, Raytheon Manager and Chairman of the Contract Services Association of America at 104).

I do think that they have a much more difficult responsibility and a much nobler mission than a typical 8(a). I was a typical 8(a). So I one of the things that kind of -- I think also that the ANCs, all of the Native Tribes, and all the Native companies, I think that they're often misunderstood by the public. In general, you have government contracting. Around the Beltway, it's like if you're fortunate to get into government contracting, somehow that's this big boondoggle, which is certainly not true. I think that with regard to contracting, that's the way that we fulfill the products and services that serves the public and protects the war fighter.

Among there, I think that we have the 8(a) companies because historically these are underutilized and underserved communities. Even then, you look at that as simply like a set-aside; but those businesses, when I was in them, I had to take care of my company, my employees, my family.

But in working with the Alaskans, from what I understand, this is the reason why ostensibly they have larger contracts is not so they can buy mansions on the Potomac, but instead they have a for economic development. *They literally have to take care of not only the generations today, but also tomorrow, and they have to preserve the land.*⁶

As the Committee works on the reauthorization of the Small Business Act, we ask that all Members be mindful of the expanded mission of the Small Business Administration.

Thank you for considering our comments.

⁶ S. Hrg *Opportunities and Challenges with the Small Business Administration's Federal Contracting Programs*, (June 2018) (emphasis added).